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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Nigeria

Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, pursuant to Commission resolution 1997/53

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Introduction

1. At its fifty-fourth session, the Commission on Human Rights adopted resolution 1998/64 in which it extended for a further year the mandate of the Special Rapporteur as contained in its resolution 1997/53. This mandate is to establish direct contacts with the authorities and the people of Nigeria and to report to the General Assembly and to the Commission on the basis of any information which might be gathered, and to keep a gender perspective in mind when seeking and analysing information. In resolution 1998/64, endorsed by the Economic and Social Council in its decision 1998/262, the Commission requested the Special Rapporteur to submit an interim report to the General Assembly at its fifty-third session (see A/53/366) and to report to it at its fifty-fifth session. The present report is submitted in response to that request.

2. The General Assembly, at its fifty-third session, adopted resolution 53/161, entitled "Situation of human rights in Nigeria", without a vote. In that resolution, the General Assembly welcomed the announcement by General Abdul-Salami Abubakar of a new programme of transition to civilian rule and noted with satisfaction the commitment of the Government of Nigeria to restore fully democracy, the rule of law and respect for human rights; took note with satisfaction of the concrete steps taken to date to implement the transitional programme and looked forward to further measures in that regard; expressed its full support to the Government of Nigeria in the important process of building a peaceful and stable Nigeria rooted in the rule of law, democracy and respect for human rights; welcomed the fact that the Government of Nigeria was reviewing the remaining decrees and urged it to repeal urgently those which had an impact on the fundamental human rights of its citizens; encouraged all sectors of Nigerian society to participate actively and constructively in the process of democratization and the re-establishment of civilian rule; noted with satisfaction the establishment of the Independent National Electoral Commission and the issuance of a detailed timetable for the election process, to be completed with the holding of presidential elections on 27 February 1999 and the handing over to a civilian government on 29 May 1999; welcomed the invitations extended by the Government of Nigeria to the United Nations, the Organization of African Unity, the Commonwealth and the European Union to provide electoral assistance and to observe the elections at all levels in order to ensure the credibility of the electoral process; welcomed the declared commitment of the Government of Nigeria to protect freedom of expression, in particular freedom of the press, and noted with interest the first steps taken to reform laws governing the media; welcomed the release of political prisoners, including the 20 detainees from Ogoni and expressed the hope for swift clarification of remaining pending cases; stressed that the establishment and strengthening of national structures and institutions in the field of human rights were of the utmost importance for the promotion and protection of human rights in Nigeria; commended the National Human Rights Commission of Nigeria for its important work and encouraged the Government of Nigeria to provide the Commission with adequate resources and to fully respect its independence; called upon all States and the organizations of the United Nations system to support generously the ongoing transitional process in Nigeria, in particular the electoral process and the strengthening of national capacity in the field of human rights, and to respond positively to requests for technical assistance and advisory

services; welcomed the decision of the European Union, the Commonwealth and the Government of the United States of America to start lifting sanctions on Nigeria in the light of the progress made towards the restoration of democratic government and respect for human rights; called upon the Government of Nigeria to abide by its freely undertaken obligations under the International Covenants on Human Rights and other human rights instruments in the implementation of the transitional programme and beyond; and called upon the Government of Nigeria to follow up the recommendations contained in the interim report of the Special Rapporteur.

Activities of the Special Rapporteur

3. As outlined in paragraphs 5 to 12 of his report to the General Assembly, the Special Rapporteur had been unable to secure approval from the Government of Nigeria for an *in situ* mission from the beginning of his mandate until September 1998. However, by letter dated 16 September 1998, the Government of Nigeria finally extended an invitation to the Special Rapporteur to undertake a mission to Nigeria. Consequently, the Special Rapporteur visited Nigeria from 23 November to 1 December 1998, accompanied by two staff members of the Office of the High Commissioner for Human Rights. The delegation had discussions with a wide range of individuals, including government officials, representatives of non-governmental organizations and individuals from civil society.

The current human rights situation

4. After assuming power in June 1998, General Abdul-Salami Abubakar committed himself and his government to a transition programme that would lead the country to civilian rule in May 1999. General Abubakar has released political prisoners, lifted the ban on party-politics, made declarations on economic reform and a privatization programme, removed internal security troops in Ogoni and adopted a policy of rapprochement with the international community. These measures, listed in paragraphs 13 to 18 of the interim report to the General Assembly (A/53/366), have had a visibly positive effect on the political atmosphere in the country and signify an era of hope for Nigeria.

Constitutional guarantees

5. The importance of a genuine, transparent, democratic and widely participatory process of constitution-making is apparent, given Nigeria's history. In September 1998, the 1995 draft constitution, which is to provide the constitutional framework in the post-transition period, was published and circulated. Following its debate, which is currently being coordinated by the Constitutional Debate Coordinating Committee (CDCC), it is to be approved by the Provisional Ruling Council. The Special Rapporteur is of the view that the promulgation of the Constitution should involve representatives of a broad cross-section of society, of which the military is a component, rather than be entrusted to the Provisional Ruling Council, a military entity. Such a process would enhance its democratic legitimacy.

6. There are two predominant views on the constitutional process in Nigeria. One holds that the 1995 draft constitution is seriously flawed owing to the fact that it was drafted by a group of individuals whose representativeness of Nigerian society as a whole has been questioned. 1/ The second view is that, in spite of the flaws in the mechanisms by which the draft was arrived at, Nigerians can objectively and constructively examine the draft and delete, introduce or modify provisions as they judge it desirable for the proper rule of law in Nigeria. The Special Rapporteur has also taken note of other views. Many Nigerians feel that under no circumstances should any option be pursued which may impede the deadline of 29 May 1999 set for the current transition programme. At the same time, the serious structural and constitutional issues in a multi-ethnic, multi-religious and pluralistic setting such as Nigeria can only reinforce the importance of a broad scope and ample time period for the constitutional debate.

7. Several individuals have proposed a form of compromise whereby the outcome of the present deliberations on the 1995 draft constitution would be accepted as a transitional constitution under which Nigeria should be governed until a "National Constituent Assembly" can be organized after civilian rule has returned. During the Rapporteur's visit, many individuals expressed concern at the fact that political parties were campaigning for elections without truly clear constitutional guidelines. For this reason, many local institutions of civil society had embarked on independent constitutional conferences aimed at producing their own critique of the 1995 draft constitution whilst developing suggestions for further provisions. Several such conferences took place (including one in Abuja organized by national human rights organizations and one in Kaduna organized by a coalition of civil society organizations). Another conference, the Conference of Nationalities, held at the end of November 1998, examined institutional mechanisms for the management of ethnic, regional and religious relations, as well as the institutional relationship between the federal, state and local authorities. The Nigerian Bar Association established a 25-member Committee on the National Political Transition (comprising 10 Senior Advocates of Nigeria (SAN), four state Attorneys-General and 11 other legal practitioners) to examine the provisions of the 1995 draft constitution and make its views known to the Constitutional Debate Coordinating Committee (CDCC). These conferences and initiatives have generated many ideas on how to strengthen constitutional rule in the country, but it will be important that the issues addressed by the various conferences are collated in a systematic manner with a view to distilling what is feasible and what is desirable, in order to engage the Government and the political parties in a full and frank dialogue over constitutional matters.

8. The Special Rapporteur holds that the atmosphere of free debate and expression of divergent views has so far been commendable and constitutes a good sign for future democratic governance. One constitutional point which demands serious attention is the necessity of constitutional provisions designed to protect the rights of the girl child and women citizens in general within the Nigerian traditional, cultural and religious context. This issue is addressed under the section on women's rights, below.

The judiciary

9. Several positive developments with respect to the judiciary have occurred since the Special Rapporteur submitted his interim report to the General Assembly. On 25 November 1998, for the first time in 19 years, the Supreme Court acquired its full complement of justices, with the appointment of six new justices. The number has thereby been brought to 15 in addition the Chief Justice of Nigeria (as provided for by the 1979 Constitution of th Federal Republic of Nigeria). In addition, 24 new justices were appointed t the Court of Appeal by the Provisional Ruling Council, bringing the total number of Justices of the Court of Appeal to 50 (including the President), i full capacity in accordance with the Court of Appeal Act. These development are welcome, given that the dearth of justices in the past had impeded the judicial process and due dispensation of justice.

10. General Abubakar's promise to ensure the financial independence of the judiciary by providing it with funds from the consolidated revenue is a further sign of the substantial efforts to strengthen the judicial system in Nigeria. However, the continued existence of ouster clauses in a number of decrees perpetuates the lack of independence of the judiciary, as lamented b the Special Rapporteur in his previous report. The Special Rapporteur reiterated with many officials during his mission the necessity of abrogatin ouster clauses if the rule of law is to be reinstated in Nigeria. One way o doing so would be the repeal of the numerous decrees in which they are contained, including the State Security (Detention of Persons) Decree No. 2 of 1984, the Robbery and Firearms (Special Provisions) Decree No. 5 of 1984, the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986, the Treason and Treasonable Offences Decree No. 29 of 1993, the Civ Disturbances (Special Tribunal) Decree No. 2 of 1987, the Public Officers (Forfeiture of Assets) Decree No. 8 of 1991, and the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994.

11. In a letter dated 30 November 1998 responding to the Special Rapporteur's written inquiries of 25 November 1998, the Special Adviser to t Head of State, Professor A.H. Yadudu, stated, "... it is pertinent to observ further that it is conventional for a military administration before disengaging and handing over to the civilian administration to repeal all decrees which are incompatible with the general tenor of the constitution which will usher in the democratically-elected civilian administration. It is therefore envisaged that all the foregoing decrees and others will accordingly be repealed on 29 May 1999".

Right to liberty and security of person

12. Since the coming to power of General Abubakar, hundreds of political detainees who were incarcerated by General Sani Abacha have been released. The Special Rapporteur was given assurances by the Government during his vis that there were no longer any political prisoners in Nigeria.

13. However, it is essential that General Abubakar repeal the many repressive decrees allowing detention without trial, suspending constitution guarantees of human rights, setting up special tribunals to try particular offences, and barring the courts from considering executive acts. While the

Abubakar Government is not currently utilizing many of these decrees, Nigerian citizens live under the threat of their application so long as they remain in force, and political activity may thus be restricted. Among the most significant decrees are the following: the State Security (Detention of Persons) Decree No. 2 of 1984, permitting indefinite detention on security grounds; the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986 and the Treasonable Offences Decree No. 29 of 1993, under which the alleged coup-plotters of 1995 and 1997 were tried, which define treason widely and provide for trial before tribunals which do not respect international standards of due process; the Public Officers (Protection Against False Accusation) Decree No. 4 of 1984, which prohibits "false accusations" against government officials; and the Civil Disturbances (Special Military Tribunal) Decree No. 2 of 1987, under which Ken Saro-Wiwa and his co-defendants were tried and executed; the Robbery and Firearms (Special Provisions) Decree No. 5 of 1984 which gives the Military Administrator powers to establish a robbery and firearms tribunal to try cases involving robbery and violence; the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994; the Legal Practitioners (Amendment) Decree No. 21 of 1994 (which empowers the Body of Benchers to dissolve the elected officers of the Nigerian Bar Association, and which the African Commission on Human and People's Rights Decree held to be in violation of article 10 of the African Charter).

14. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 empowers the Failed Bank Tribunal to recover debts owed to failed banks and try all bank-related offences. The trial judge cannot exercise any discretion in granting bail to suspects. In order to secure bail, the accused is required (under section 267 thereof) to deposit half of the amount alleged in the offence and provide surety for the balance of the amount, as well as submit his passport to the Tribunal for the duration of the trial. This amounts to a violation of the right to presumption of innocence guaranteed by the Constitution, and furthermore to a violation of the right to liberty and security of person.

15. The Decree also contains a provision whereby if a debtor or an accused person is not in Nigeria s/he can be tried in absentia. Relations of bank executives can be held to be accountable notwithstanding their innocence, since section 29 of the Decree defines a director of a bank to include "a wife, husband, father, mother, son or daughter of a director". At least 150 executives of "failed banks" remain in detention without charge. General Abubakar has promised to review these cases.

16. In positive developments, the Government has withdrawn both Operation Sweep from Lagos and the Rivers State Internal Security Task Force from Ogoniland, answering long-standing calls from critics in Nigeria and internationally for their withdrawal. However, in the oil producing areas of the Niger Delta, police and soldiers still allegedly respond to protests against oil company activities with arbitrary arrests, beatings and sometimes killings.

Right to a fair trial

17. Tribunals established by decree bypass the regular judicial system and thereby undermine the integrity of the judicial process, resulting in denial of due process and violating article 14 of the International Covenant on Civ and Political Rights and article 7 of the African Charter guaranteeing the right to a fair trial. For example, the defects of tribunals established under the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987 were recorded in the report of the Secretary-General's fact-finding mission (A/50/960, annex I, paras. 40-55). That such tribunals are not impartial or independent has been affirmed by two decisions of the African Commission. T Secretary-General's fact-finding mission recommended that the Government of Nigeria repeal the Civil Disturbances (Special Tribunal) Decree so that offences of this type are tried by the ordinary criminal courts.

18. While the Special Rapporteur welcomes the release of several prisoners who were serving sentences after trial by military tribunals and by processe which fell short of international fair trial guarantees, during his visit he expressed continued concern that others convicted in connection with the alleged 1990, 1995 and 1997 coup plots remain incarcerated, including the civilian Niran Malaolu, a journalist convicted of involvement in the 1997 co plot, and Rebecca Ikpe, the relative of an officer convicted in the 1995 cou These individuals should either be released unconditionally or retried befor independent tribunals which adhere to international norms of due process. This recommendation also applies to General Oladipo Diya and the military an civilian prisoners convicted for the alleged 1997 coup plot, whose death sentences were commuted and prison sentences reduced in July 1998 by the Provisional Ruling Council.

Right to dignity and humane treatment while in detention

19. A general consensus exists in Nigeria that the problems of its prisons are enormous. These range from overcrowding and congestion to poor living conditions for prisoners (including inadequate shelter, clothing and medical services, leading to deaths in prison), and lack of adequate rehabilitation and training for prisoners.

20. A National Committee on Prison Reforms and Decongestion has been established as the result of recommendations made to the Federal Government the National Commission for Human Rights. The Head of State also establishe in September 1998 a National Task Force on Prison Decongestion and Penal Reform, with a mandate to look into all cases of prisoners in Nigeria, in order to recommend those to be released to facilitate prison decongestion, a to draw up a comprehensive penal reform package. The Task Force consists of the Minister of Internal Affairs, the Attorney-General, the Controller-Gener of Prisons, the Chairman and Executive Secretary of the National Human Right Commission, the Legal Adviser to the Head of State and the Representative of the Presidency on Political Affairs, and NGOs (the Prisoners Rehabilitation and Welfare Action (PRAWA) and the Civil Liberties Organization (CLO)). The Task Force was given a lifespan of six months. It is hoped that concrete measures and results will begin to be perceptible in this time-period.

21. On the crisis of overpopulation in prisons, the Controller-General of Prisons maintains that their overall capacity is 36,375, while the total inmate population at present is about 47,387. He admitted that management has an uphill task. The task is further complicated by the fact that over 60 per cent of the inmate population are awaiting trial.

22. Prolonged detention periods without trial constitute one of the gravest abuses of human rights in this field. A speedy trial is implicit in the concept of a fair trial. The Special Rapporteur spoke with several detainees in Kaduna and Ikoyi (Lagos) who had been awaiting trial for long periods, some up to seven years. Such detainees included individuals being held as suspects under the robbery and firearms decree. The reasons for delays include repeated adjournments, judicial vacancies, transfers and lack of preparation. The Special Rapporteur met Sheikh Ibrahim El Zak-Zaky in Kaduna prison. Mr. Zak-Zaky is a Muslim leader entering his third year in detention. He is charged with publication of materials capable of undermining the security of the nation. Several of his associates are detained with him.

23. Local government administrations in Lagos and Kaduna states have begun commendable measures to alleviate this difficulty by having the chief judge travel to the different prisons in the state to hear prisoners' cases, instead of waiting for prisoners to be brought to the central courts. In Lagos, the local government has actually embarked on a project of building courts on the same premises where the prison is situated. It was also a positive sign to note that no cases of solitary confinement were reported, denoting a possible discontinuation of that inhuman practice.

24. According to discussions with both the judiciary and prison officials, it is clear that the problems affecting prisoners in this regard relate more to the fact that there are not enough judges and magistrates to handle cases, and even where some of these did apply themselves to their work, the material facilities at their disposal are lamentably inadequate. The volume of work calls for more and up-to-date equipment and staff skills. This need to modernize is borne out by the example of the prison in Kaduna, which was constructed in 1921 and yet has to cater for the state's needs of today.

25. In addition to the measures mentioned above. The Criminal Justice Release from Custody (Special Provisions) Act has also made it possible for some convicts to be released.

Freedom of expression, association and assembly

26. Respect for the rights to freedom of expression, association and assembly is crucial to a credible political process and to a democracy based upon the rule of law. Parties and candidates must be able to campaign and hold rallies freely, and journalists must be able to comment on the process without fear of harassment. While it is a matter of satisfaction that since General Abubakar's accession no journalists have been detained, several remaining restrictions must be lifted for the transition programme to be credible. General Abubakar should repeal all decrees restricting freedom of expression and of the press, including the Offensive Publications (Proscription) Decree No. 35 of 1993 and the Newspapers Decree No. 43 of 1993.

The 1995 draft constitution includes provision for a "mass media commission" to regulate the media, which raises concerns about the possibility of future restrictions on critical reporting under this provision.

27. The repeal in August 1998 of restrictive Trade Union Decrees Nos. 9 and 10 marked a break from a history of constraint on organized labour and professional associations. During his visit, the Special Rapporteur expresse to the Minister of Labour the hope that the Government would review trade union decrees remaining in force, including Decree No. 4 (ordering the merging of Nigerian Labour Congress (NLC) affiliates from 41 industrial union into 29 unions and making it a criminal offence for any union other than the 29 listed in the decree to belong to the NLC), Decree No. 26 of 1996 (restricting those who can be elected to union office to union members employed in the industry or sector the union represents) and Decree No. 29 of 1996 (annulling international affiliation and making all international affiliation subject to prior government approval). The Special Rapporteur wa assured by the Minister of Labour that these decrees were in review. Furthermore, in his letter of 30 November 1998, Professor A.H. Yadudu stated that some decrees, for instance Decrees Nos. 4, 26 and 29 of 1996, may be repealed before 29 May 1999.

28. It is pertinent to note in this regard that the ILO Direct Contacts mission also concluded:

> "It is clear that measures need to be taken in the immediate future to repeal Decrees Nos. 4, 26 and 29 in the light of the comments made by the ILO supervisory bodies, in order to bring the legislation into greater conformity with freedom of association principles and standards. Such rapid action to eliminate clear violations of freedom of association remaining in law would demonstrate to the Governing Body continuing determination on the part of the Government to take all necessary measures in order to ensure full respect for trade union rights in Nigeria."

Freedom of movement

29. The right to freedom of movement is gravely undermined and susceptible to abuse because of the absence of any statutory provisions stipulating the grounds on which a citizen's passport may be refused, impounded or cancelled.

Right of every citizen to vote and to be elected in genuine periodic elections

30. General Abubakar continues to fulfil his undertakings in this regard. Different reports and conclusions so far on the recent elections held on 5 December 1998 are a source of encouragement. Indeed the Commonwealth Secretary-General, Mr. Emeka Anyaoku has "congratulated the Nigerian Election Commission". Described as peaceful and professional 2/ by the United States State Department, the elections recorded a high turnout, the peoples' enthusiasm reflected in the large number of voters at polling stations, and calm prevailed over most of the country, with only isolated violent incident

31. The Special Rapporteur was witness to a lively debate over the age requirements for contenders to certain electoral posts and party registration conditions in Nigeria today. New ground was being broken as amendments to earlier conditions were adopted. Thus, in the course of a special session of discussions, the different party representatives agreed to revise candidate age qualifications downwards. On 21 November the Chairman of the Independent National Electoral Commission revealed that the new conditions for a party to register were for it to obtain 5 per cent of expressed votes in at least 24 states and accepted the parties' representatives demands that the lowest age limit for a candidate running for council chairmanship be reduced from 35 to 30.

Women's rights

32. Nigeria ratified the Convention on the Elimination of Discrimination Against Women in 1989, although its implementation had not effectively taken place before the adoption of the Beijing Declaration and Platform for Action in 1995. One of the steps taken by the Government of Nigeria in this regard has been to carry out a national baseline survey of harmful traditional practices (HTPs) with a view to providing relevant and accurate data for the development of national, State and local plans of action. HTPs are traditional, cultural and religious practices handed down through succeeding generations which are often detrimental to the health and psychological and social well-being of women and girls. These practices also violate personal fundamental human rights for the girl children or women concerned. HTPs include female genital mutilation, early marriage and the attendant pregnancies which cause Vesico Vagina Fistula (VVF), widowhood practices, discriminatory inheritance and property laws, bride price, betrothal rights, parental consent, discriminatory divorce laws, lack of contractual capacity, wife battering, male child preference, and unequal access to education and health care. Regrettably, these practices operate in parallel to international provisions for the protection of women's rights.

33. The slow pace in eradicating HTPs in Nigeria is also a reflection of the absence of government policy on this aspect of gender inequality. After discussions with women leaders and personalities from the various parts of the country, the Special Rapporteur realized that the problems are partly due to the difficulty of changing behaviour that adversely affects the rights of women. The task is one of first changing attitudes, and this requires advocacy and education. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women states:

> "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy eliminating discrimination against women, and to this end, undertake: ... to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Article 5 provides that:

> "States Parties shall take all appropriate measures: to modify the social and cultural patterns of conduct for men and women, with a view

to achieving the elimination of prejudices and customary and all other practices which are based on the ideal of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

34. The highest prevalence of female genital mutilation is said to be in the states of the south-west (Osun, Oyo and Ondo) and Edo. The states in the south-east have a comparatively lower prevalence of this phenomenon although they have a higher rate than that observed in the northern zones. The states in the southern zone also have significantly high rates. According to the Dean of the Faculty of Medicine at the University of Benin, reproductive health care for women is poor, leading to 50,000 deaths among women per year related to pregnancy and childbirth.

35. Grossly unfair treatment and practices in the area of inheritance rights which result from traditions, culture or religion must be addressed in order to enable women to enjoy their rights as equal citizens with men.

36. Formal banking procedures and regulations exist which require a woman to have her husband's or another male relative's signature in addition to her own before she can qualify to obtain a loan. There are no comparable conditions imposed on male customers.

37. The consequences of the current imbalance in gender treatment and practices are also evidenced in the literacy rate, which for women stands at 47 per cent compared to 69 per cent for the male population. Statistics indicate that more than two thirds of Nigerian women are illiterate. Stereotyping of women's roles also has consequences for women's rights to education. Because of the relatively high cost of education, many parents with limited means prefer to educate male rather than female children.

38. In the workplace, cultural and gender stereotypes in hiring practices continue to relegate women to second-class positions. In contravention of articles 2 and 11 of the Convention on the Elimination of All Forms of Discrimination Against Women, women suffer discrimination in access to employment, promotion and equal pay for work of equal value. Certain professions (nurses, junior teachers, secretaries) continue to consist predominantly of women, while others exclude them (underground mining). Pregnancy continues to be a threat to career advancement.

39. Discrimination is evidenced in Nigerian Police Regulation 124, which requires women officers to seek the permission of their state Police Commissioners before marrying. Permission may be withheld if the intended spouse is deemed to be of unfavourable character, or if the woman officer has served for less than three years. 3/ Male officers are not subject to this regulation. An unequal tax structure gives child relief only to men, based on the assumption that the man is solely responsible for meeting the material needs of the family.

40. About 52 per cent of Nigerian women live below the poverty line, while 70 per cent of women live and work in the rural areas, mostly contributing to the domestic economy, as farmers, petty traders, domestic workers and home-makers. Their work is unrecognized and unrewarded.

Community lending banks frequently disburse loans to women only through their husbands. Women's access to credit is restricted by low income, lack of collateral or property, illiteracy and institutionalized discrimination and stereotyping. The Government has done little to abrogate these discriminatory practices.

41. Early and forced marriages are legally protected in some parts of Nigeria 4/ while legislation continues to permit wife chastisement.

Children's rights

42. Although Nigeria was one of the first countries to sign the Convention on the Rights of the Child in 1991, its implementation in a country with such significant cultural differences remains a great challenge. The foregoing paragraphs have shown the dire need to put in place legislation to safeguard the girl child's rights, given the existing legal, social and cultural systems. The situation is equally grave with regard to child labour. Information collected indicates that such exploitation remains a common practice in Nigeria, mostly in the south-eastern region. Some outstanding and concerned academics have spoken out over the issue in Abuja, calling for the "empowerment of child workers" in the country with a view to finding ways of reducing their burden of work and to ensure that children receive sustenance so that those below the poverty line are not "over-used".

43. Against the above background, the Special Rapporteur was glad to learn of the joint Federal Government of Nigeria-UNICEF Programme of Cooperation for the period 1997-2001 aimed at reducing infant, under-five and maternal mortality, and chronic under-nutrition; improving access to universal basic education, safe drinking water; and creating a healthy environment within a children and women's rights framework. The world community is urged to devise ways of supporting the Government of Nigeria in this undertaking.

Economic, social and cultural rights

44. Putting in place a policy which reflects greater concern for fundamental economic, social and cultural rights presents the Government with a daunting challenge. In the present situation the majority of the population do not have access to health facilities, education, food, shelter, or basic amenities such as safe water. The majority of Nigerians live well below decent social thresholds. One of the main reasons for this situation is the non-observance of legal safeguards of the right of people to work and appropriate remuneration. Although Nigeria has ratified the International Covenant on Economic Social and Cultural Rights and the African Charter on Human and People's Rights (Ratification and Enforcement Act, cap. 10, Laws of the Federation 1990), the arbitrary habits and practices of past governments still shackle State institutions and lead to serious abuses.

45. Starting in April 1998, both federal and state governments embarked on mass retrenchment of civil servants under laws which conferred wide discretionary power on the Government and disallowed court action in this respect. The Preamble to the enabling law, the Public Officers (Special Provisions) Act, cap. 381, Laws of the Federation 1990, sums up the object of the Act as being "An Act to provide for the dismissal, removal or compulsory

retirement of certain public officers for diverse reasons; and to prevent civil proceedings being instituted against such action". By June 1998, over 40,000 civil servants had lost their jobs in the federal civil service. The retrenchment exercise was part of a process of deliberately reducing the federal civil service workforce by about 30 per cent. Similarly, the Nigeri Postal Service (NIPOST) had reportedly laid off about almost half of its workforce (10,000 out of 24,000), by the end of May 1998. In the states of Kaduna and Abuja, about 30,000 civil servants reportedly forcefully lost the employment. Those dismissed were denied any form of compensation. Even though General Abubakar's administration has suspended such acts, no employe affected by the retrenchment exercise is known to have been recalled. It ha been brought to the attention of the Special Rapporteur that Mr. Ayodele Akele, chairman of the Lagos State Council of Industrial Unions (COIU) was sacked on 7 October 1998 for calling a strike action to demand th payment by the state government of the revised minimum wage announced by the Federal Government. The Lagos state government justified its act by evoking the Public Officers (Special Provisions) Act cited above.

46. The Special Rapporteur is also concerned about the cases of 22,000 Kaduna state civil servants who were retrenched by the state government following a strike action to demand implementation of a salary review made by the Federal Government, and that of 2,000 Nigerian Security Printing and Minting Company employees dismissed in 1997 for striking in protest at conditions which grossly violated their rights at work. These categories of employees have no legal avenue to challenge the termination of their appointments. The social consequences of the above situation are evident.

47. The Federal Government's attempt in September to reflect prevailing socio-economic realities in its wage structure by announcing enhanced wages for federal civil servants, increasing the minimum wage to 5,200 naira (about $60) was commendable. However, it was subsequently reversed, with a downward adjustment of the basic minimum salary to N1,200, ($15). The Government needs to consider critically whether the salaries paid to people are reasonable to enable them to meet basic needs, including housing, education, food, health, recreation and family support. The Government mus ensure that persons employed by the State receive their pay on time as a matter of right. In this connection, it is hoped that the situation in Imo State, where teachers have not received their salaries for five months, will be rectified as a matter of urgency.

The right to housing

48. Many Nigerians do not have access to adequate housing. Numerous pers are unhoused, or dwell in shacks, slums or dilapidated, dangerous structure While the Government is under an obligation to provide housing under article 11.1 of the International Covenant on Economic, Social and Cultural Rights, much has been largely left to private persons and real-estate developers, making access to housing dependent entirely on the interplay of purely market forces. Although rent control laws exist, they are not enfor in most states of the federation and thus provide ample opportunity for property owners to exploit house seekers.

49. The operation of the existing National Housing Fund (NHF) scheme calls for reinvigoration to improve access to housing through the provision of mortgage loans to individuals. Contributors to the scheme who lost their deposits through the liquidation of their primary mortgage credit institutions should be compensated.

50. Where the Government undertakes housing projects which entail evictions, all measures must be taken to protect the interests and rights of the affected citizens, including compensation and resettlement. The case of the 300,000 Maroko community members rendered homeless in July 1990 should serve as an example never to be repeated. Yet in 1996, some 2,000 people were forcibly evicted from their houses in the Ijora Badiya and Oloye areas by the Lagos state government in order to have drainage channels constructed in the affected areas. Although the drainage project was co-funded by the World Bank, and included provisions for the resettlement and compensation of persons who would be affected by its construction, none of the affected persons in those communities have been compensated or resettled. The Lagos state government in 1997 also forcibly evicted residents of the Eric Moore Road Resettlement Quarters from homes they had occupied for nearly half a century, and demolished the buildings. No compensation or resettlement was provided for those affected either.

51. Other cases of violations of housing rights occurred in June 1998 in the Agodi area of Ibadan, in Oyo state, and in August 1998, in the Kuchingoro area of the Federal Capital Territory. Residents claim they received quit notices ranging from 21 days to the day the evictions were taking place. Those affected have not been rehoused or compensated or resettled.

The right to health

52. Nigeria is a signatory to various international conventions and covenants which recognize the right of all citizens to health, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the African Charter on Human and Peoples' Rights. The 1979 Nigerian Constitution provides for "adequate medical and health facilities for all persons" (art. 17 (3)(c)), while the 1995 draft constitution, although not yet in force, goes further to guarantee the right of every citizen to free medical consultation at government-run facilities (art. 18 (3) (d)). However, the right to health, or to the "best attainable state of physical and mental health", 5/ remains largely inaccessible to the majority of Nigerians. Public health infrastructure and facilities are obsolete, while essential health-care equipment is mostly unavailable or in varying states of disrepair. Consultation and treatment in public health institutions, where accessible, are unaffordable for most Nigerians - driving many to resort to self-medication or treatment by medically unqualified persons.

53. The deplorable state of health care in Nigeria is largely due to inadequate allocation of funds to the health sector. In its 1998 budget, the Federal Government allocated 11.93 billion naira to health (4.9 per cent of the total budget). 6/ Given Nigeria's estimated population of 120 million people, this figure represents less than 100 naira ($1.20) expenditure per person for health care delivery in 1988. As a result, basic hospital

consumables, such as cotton wool and syringes, are often unavailable in man hospitals across the country, while erratic power and water supply means th routine medical or surgical procedures are fraught with risk and often resu in casualties. The under-funding of the health sector, a situation which h continued for over a decade, has meant a steady deterioration in health services for a long period and the emigration of professional and highly experienced health practitioners to foreign countries, leaving a dilapidate health care delivery system in Nigeria. This state of affairs is unacceptable. The infant mortality rate in Nigeria has reached 84 per 1,00 and the maternal mortality rate is 800 per 100,000 7/ live births, compared with 70 per thousand and 382 per thousand respectively on average for developing countries.

54. The state of health in Nigeria does not fulfil the Government's obligations under the International Covenant on Economic, Social and Cultur Rights to "create conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12 (d)). Disease prevent policies are effectively lacking across Nigeria, leading to frequent epidemics. The vulnerable populations in slum communities surrounding majo cities, and the rural populace suffer regular pandemics of cholera, dysente and other hygiene-related diseases. Individuals in the oil-producing areas suffer from environmental hazards resulting from oil pollution and gas flaring: respiratory ailments, skin diseases, gastrointestinal disorders, etc. The scarcity and high cost of drugs has bred a thriving, unregulated black market in cheap, dangerous and fake substitutes.

55. Moreover, gross inequality exists in access to health care not only between the rich and the poor in Nigeria, but between rural and urban dwellers. An estimated 95 million Nigerians living in rural areas have no access to orthodox medical care. Not only are health care centres sparse i these areas, but many rural dwellers are poor and cannot afford to consult them. The situation is only marginally better in the urban areas where expanded social and family networks provide support needed by sick people f treatment.

56. Endemic diseases such as malaria and guinea worm persist. If not addressed more effectively through campaigns of prevention, HIV/AIDS will spread more rapidly. Nigeria accounts for 25 per cent of the global spread AIDS in 1998, with over half a million new infections; yet, efforts to educ the public about AIDS prevention and management are insufficient. 8/ The health needs of special or particular groups such as pregnant women, the ag and the disabled, are also neglected. The general perception is that resources which should have been employed in improving the health, living a education standards of the people and furthering their socio-economic right have been diverted by corruption, which has prevented the benefits of vario schemes from reaching the people.

Corruption

57. In its Concluding Observations, the Committee on Economic, Social and Cultural Rights stated that it was "greatly disturbed that 21 per cent of t population of Nigeria live below the poverty line in spite of the country's rich natural resources". It noted with concern that, "due to economic and

administrative mismanagement, corruption, runaway inflation and the rapid devaluation of the naira, Nigeria now ranks among the world's 20 poorest countries" (E/C.12/Add.23, para. 25).

58. These observations underscore the fact that the implementation of fiscal and economic policies by the Government and the use and distribution of national resources are carried out in such a way that most people are deprived of access to basic social and economic rights and opportunities, including access to education, health care, physical and mental integrity, water, food, etc. It is deplorable that this state of affairs has occurred not through natural calamities, but through national waste and mismanagement.

59. Corruption in official circles and mismanagement have both direct and collateral consequences for the enjoyment of social and economic rights and also for civil and political rights. The obligation to "take steps ... to the maximum of ... available resources" 9/ towards the full realization of economic social and cultural rights is seriously and fundamentally undercut by the corrupt diversion of the "available resources" of the State and its consequential effect on the fulfilment of State obligations to citizens.

60. In November 1998, for example, the Federal Government announced that it had recovered over 63 billion naira (nearly US$ 750 million) from the family of the late Head of State, General Sani Abacha, allegedly stolen within one year. Added to the money and other property recovered from the Security Adviser to the late Head of State, the recovered sums amount to about 125 billion naira (US$ 1.4 billion). This amount surpasses the total federal budget for education, health, social welfare, transportation and power generation in two consecutive years (1997 and 1998).

61. Unaccounted federal revenue of about US$ 12.4 billion is still uninvestigated. It is documented as having been received from surplus oil sales in 1991 and was reportedly misappropriated by General Ibrahim Badamosi Babangida, Nigeria's erstwhile military ruler. 10/ Up till now, no charges have been brought against the former Head of State or those who collaborated with him. Also, the Abubakar administration has not investigated widespread allegations of corruption levelled at former and serving State military administrators. By not taking action against these people, the Abubakar Administration condones the crime of corruption and the systematic violations of social and economic rights.

62. As a consequence of the massive misappropriation of national resources, critical service sectors of the nation are in acute dysfunction. Power, water and fuel are in severely short supply and unavailable in many areas of the country, which is forcing many industries and commerces to close down or operate well under their regular capacity (leading to unemployment and underemployment). Many schools, including primary and post-primary institutions, have resorted to imposing various fees and levies on students as a direct result of grossly inadequate funding; this has led to massive withdrawals from school by pupils. Poor funding has also led to massive drifts of experienced and skilled tertiary-level manpower away from educational institutions. Access to health care, as stated above, is largely unavailable for most of the population of the country.

63. Although the new Government of General Abdulsalami Abubakar has indicated that it will uphold transparency and accountability in governance, it has yet to take credible action to substantiate its commitment to make former State officials accountable for their misappropriation of State resources.

64. The relationship between accountability, good governance and respect for human rights is well established and in this vein, the Nigerian Government must take action to end the impunity that has characterized the use of national resources in the past, in order to ensure that public resources are faithfully applied towards improving the lives of the Nigerian people.

The right to development and a satisfactory environment

65. Deep concerns about widespread and severe environmental damage in the River Delta region on account of oil exploration and other operations of the Shell Petroleum Development Company of Nigeria (SPDC) continue. The fact of spillages is not in dispute. However, there is controversy about the causes, namely whether it is on account of human or operational error or on account of sabotage and other acts of vandalism. It is not possible for the Special Rapporteur to determine these contentious factual issues. The Special Rapporteur is of the view that these issues of environmental damage and liability for it, as well as the question of environmental protection, may be more appropriately determined by an independent agency which is mutually agreed upon by the concerned parties. The Movement for the Survival of the Ogoni People (MOSOP) expressed its willingness to cooperate in implementing this proposal when it was suggested by the Special Rapporteur. Shell stated that it had no objections to the government setting up an independent investigation, but that it should not cover only the Ogoni area, but should include the entire Niger Delta, in order that Ogoni was not treated in isolation.

66. The SPDC practice of providing its security personnel with the same uniform as that of the Nigerian police has given rise to grave apprehensions and allegations that the Nigerian authorities have put a mobile police force at the disposal of SPDC. The Special Rapporteur is of the view that it would be advisable if this practice of providing the same uniform is discontinued by SPDC.

67. SPDC has initiated some developmental projects. The Special Rapporteur feels that their range should be expanded, and that they should be undertaken in consultation with the communities concerned.

68. There have been frequent complaints regarding the inadequacy of the compensation paid for the land and crops of landowners acquired by the oil companies, and the delays in payment. The rates for compensation are specified by the Department of Petroleum Resources (DPR). DPR instituted a major review of the rates involving valuers, community leaders, local government chairmen and others. These rates are yet to be released. One grievance was that the landlords have no voice of representation in the matter of fixation of rates for compensation. An exclusive independent judicial mechanism charged with the mandate of early disposal of compensation claims would go a long way towards meeting these grievances.

The National Commission on Human Rights

69. One of the significant steps taken by General Abubakar's administration has been to allow greater initiatives and autonomy to the National Commission on Human Rights. During the two years of its functioning, under the Chairmanship of Justice Paul K. Nwokedi, this body has acted as a check on the State's disregard and abuses of fundamental human rights as enshrined in the Nigerian Constitution and laws, and as stipulated in the relevant international human rights instruments to which Nigeria is a party.

70. Operating in a difficult political environment and with limited material resources, the Commission has nevertheless laid a foundation upon which much remains to be built. In discussions with the members of the Commission, the Special Rapporteur was presented with an elaborate plan of action in the field of the promotion of human rights through seminars, workshops, special training programmes for specific State actors such as judges, police prisons officials and teachers. The action is also aimed at targeting civil society in general to reach students as well as the general public. It is worth noting that this institution has projects that go beyond national objectives and seek to spread the human rights awareness campaign at a regional level, using Nigeria as a starting point.

71. Some of the Commission's achievements include recommendations presented to the Federal Government following a survey by Commission members of the inhumane conditions in prisons, which resulted in the establishment by the Government of Committees for prisons reform and prison decongestion. In 1997, four important seminars on the subject of human rights were held in Abuja, Kano, Lafiya and Abuja. Training workshops took place in several other main towns in the country.

72. In view of the above efforts, the Special Rapporteur hopes that the positive initiatives of the National Commission on Human rights are given support in the forms that needs assessment undertaken in conjunction with the Nigerian authorities would show to be necessary. The needs are likely to include expertise in human rights education and materials to expand the commission's activities throughout the country, especially given that it currently has offices in only 6 out of 36 states. The democratic civilian administration which will come to power in May 1999 should ensure adequate structural and financial independence for the commission.

Conclusions

73. There is a noticeable change in the political atmosphere and in the attitude of the administration.

74. There is transparency and willingness to open up to outside agencies and persons and general acceptance of criticism.

75. The transition process is well on course. The current trend reflects sincerity and seriousness about fulfilling the commitment to return to civilian rule and to restore democracy.

76. The Independent National Electoral Commission, headed by Justice Ephraim Akpata, is actively engaged in ensuring that the oncoming elections are free and fair.

77. The Constitutional Debate Coordinating Committee (CDCC) headed by Justice Nike Tobe is seriously engaged in the task of framing a constitution before the hand-over to civilian rule on 29 May 1999 and for that purpose has invited the views of various persons and parties. There is an ongoing debate, marked by divergence of views, which are freely and forthrightly expressed.

78. The human rights situation in the country has improved. Several persons have been released. No arrests or detention under Decree 2/1984 have been reported since 9 June 1998.

79. Some decrees restricting freedom of assembly and association have been repealed, for example Decrees No. 9 and 10 of 1994 and Decree No. 24 of 1996.

80. However certain restrictive Decrees have not yet been repealed, including Decree No. 4 (which ordered the merging of NLC affiliates from 41 industrial unions into 29 unions and made it a criminal offence for any union other than the 29 listed in the decree to belong to the NLC), Decree No. 26 of 1996 (which restricts those who can be elected to union office to union members employed in the industry or sector the union represents) and Decree No. 29 of 1996 (which annulled existing international affiliation and made all international affiliation subject to prior government approval).

81. A distressing feature is the continued operation of Decree 2/94, which permits detention without trial for an indefinite period.

82. Decree 1/96 and other decrees which permit determination of rights and obligations by military tribunals or by tribunals which have a military presence, do not guarantee free trial.

83. Decree 2/94 and ouster clauses in various decrees facilitate violation of human rights and are still operative. They are incompatible with the rule of law.

84. Not all the alleged coup-plotters of the 1995 and 1997 alleged coups have been released, even though their conviction was by a flawed process before a tribunal which lacked the requisite independence and impartiality envisaged by article 14 of the International Convenant on Civil and Political Rights and article 7 of the African Charter.

85. Numerous persons are awaiting trial, in some cases for petty offences. There have been welcome judicial initiatives to release persons who have been in jail for periods longer than the period to which they were sentenced upon conviction, and in other deserving cases. There are proposals to have courts in the vicinity of prisons in order to ensure speedy trials.

86. Some aspects of the Failed Bank Decree are disturbing: (a) Stringent bail conditions which are virtually incapable of compliance; (b) imposition of liability in certain cases on persons unconnected with the suspected banking fraud if the primary offender absconds or is not available. This is tantamount to hostage taking.

87. The appointment of justices to vacancies in the Supreme Court and the granting of financial autonomy to the Supreme Court are encouraging developments.

88. Prison conditions are still harsh and do not conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

89. Improvements have been made in women's participation in the political process and women have been more included in public affairs. There is an increase in the number of female judges. The practice of female genital mutilation continues and the Government has not taken sufficient measures to address this practice. There is no determination to repeal or modify laws which operate in a discriminatory manner against women, owing to the religious complexity of the issues involved. Discriminatory practices against women continue unabated (see paras. 35-41 above).

90. The country is facing severe problems of infrastructure. There is lack of essential health services in rural and underdeveloped urban areas.

91. There is continued malnutrition amongst children. Almost 30 per cent of Nigerian children suffer from malnutrition and its damaging consequences (see E/C.12/1/Add.23).

92. The National Human Rights Commission is doing commendable work in the field of human rights. It has undertaken several important initiatives, including a study of prison conditions, and human rights promotional activities in conjunction with NGOs, and in the field of human rights education. The Commission is likely to play an important role in the promotion and protection of human rights in the transition to civilian rule. The Commission, if strengthened by making it independent and expanding its range of activities, could contribute meaningfully to building a culture of human rights in Nigeria.

Recommendations

93. The Government should do everything possible to maintain the present momentum of transfer to civilian rule and restoration of democracy, and the atmosphere of transparency.

94. Steps should be taken to ensure that all stages of the electoral process conform to international standards on the enjoyment of universal and equal suffrage guaranteeing the free expression of the will of the electors. In addition to responding to the invitation to international observers to monitor all stages of the elections, the international community should react positively to any other requests for technical assistance or expertise at any stage of the electoral and transitional processes.

95. All persons detained without trial should be released immediately or forthwith brought to trial before regular courts.

96. All persons serving sentences after trial by military tribunals and by processes which fell short of international guarantees for a fair trial shoul be released.

97. There should be no selective release of convicted alleged coup plotters All persons convicted for the alleged 1995 or 1997 coup should be released.

98. State Security (Detention of Persons) Decree No. 2 of 1984 ought to be repealed.

99. Clauses in various decrees which oust the jurisdiction of the courts should be deleted.

100. Determination of the rights and obligations of persons and in particula the determination of any criminal charge against a person should be made by regular courts of law. All legal proceedings must be conducted in public before independent courts whose proceedings conform to international norms of due process.

101. All repressive decrees which infringe freedom of expression and freedom of the press should be repealed or, in any event, amended so as to ensure tha no unreasonable or disproportionate restrictions are placed on freedom of speech and expression and the freedom of the press.

102. Decrees which infringe freedom of assembly and association, referred to in paragraph 26 above, should be repealed.

103. The provisions of the Failed Bank Decree relating to bail should be modified so as to enable courts to grant bail in genuine and exceptional cases. The provision in the Decree which empowers imposition of liability in certain cases on persons unconnected with the banking fraud, if the primary offender absconds, should be repealed. Persons detained under this Decree should be tried expeditiously, if necessary by establishing additional courts

104. Decree 1/96 and other decrees which permit determination of rights and obligations by military tribunals, or by tribunals, which have a military presence, should be repealed.

105. Immediate measures should be adopted to eliminate the causes leading to delays in trials and to ensure prompt trial of persons in jail for long periods awaiting trial. Additional courts with a sufficient number of judges need to be established.

106. Prison conditions should be redressed as a matter of urgency. Immediat measures should be adopted to ensure that the conditions of detention fully comply with article 10 of the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners, and the

Basic Principles for the Treatment of Prisoners. Detainees should be permitted periodic visits by members of their family and should have access to lawyers and doctors of their choice. Detainees should not be denied reading material and other basic amenities.

107. Prompt compensation should be paid to persons whose human rights have been admittedly or established to have been violated.

108. Measures should be adopted and implemented for full and equal enjoyment by women of the rights and freedoms guaranteed by the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women and their equal participation should be encouraged at all levels of the country's political, social and economic life. Laws contrary to the equal rights of women should be repealed. Urgent measures should be initiated to curtail the practices of female genital mutilation and forced marriage.

109. Urgent steps should be taken to ensure compliance with the provisions of the Convention on the Rights of the Child. Education of children, nutrition and health care should be dealt with on a top priority basis. The concerns expressed by the Committee on the Rights of the Child (see E/CN.41/1998/62, para. 81) should be immediately addressed and promptly redressed.

110. Greater attention needs to be paid to and more resources deployed for the protection and promotion of the economic and social rights of the people, especially in the field of health, shelter and education.

111. The federal and state governments should adopt effective policies, measures and programmes aimed at increasing housing and access to housing in Nigeria, especially through the provision of mortgage financing and the development of primary mortgage institutions.

112. There should be increased budgetary funding of the health sector. The Government should aid health institutions to procure modern medical equipment.

113. Effective disease prevention and management strategies should be initiated and the population properly educated about diseases such as AIDs.

114. The hardship caused by the practice of forced eviction of persons in the course of execution of developmental or community projects should be seriously addressed and steps taken to minimize this hardship by providing alternative accommodation to the affected persons.

115. Measures should promptly be initiated to alleviate the plight of the Ogoni people, including implementation of the recommendation of the Secretary-General's fact-finding mission that a committee comprised of representatives of the Ogoni community and other minority groups in the region, to be chaired by a retired judge of the High Court, be appointed for the purpose of introducing improvements in the socio-economic conditions of these communities.

116. An independent agency should be established in consultation with SPDC, MOSOP and other groups for the purpose of determining all issues relating to

environmental damage due to oil exploration and other operations, as well as issues of environmental protection. The agency should cover not only the Ogoni area but the entire Niger Delta. The findings and conclusions of such an inquiry and investigation should be made public. The SPDCs practice of providing for their security personnel the same uniform as that of the Nigerian police should be given up. SPDC should initiate more development projects in consultation with the communities concerned. An exclusive independent judicial mechanism with the mandate of early disposal of compensation claims should be established.

117. The recommendations of the Secretary-General's fact-finding mission, the Human Rights Committee as contained in its concluding observations, and the Committee on Economic, Social and Cultural Rights as contained in its concluding observations should be promptly and fully implemented.

118. The Nigerian National Human Rights Commission should be adequately resourced and its independence respected. It should be strengthened by expansion of its powers and jurisdiction to cover all cases of violations of human rights, including economic, social and cultural rights. Security of tenure should be guaranteed to the Chairperson and members of the Commission and the Commission should be encouraged in its efforts to work closely with NGOs in its activities to promote and protect human rights. Appointments of the Chairperson and the members of the Commission should be made in consultation with the Chief Justice of the Supreme Court of Nigeria. The findings and recommendations of the Commission should be generally binding upon the Government unless the Government, for reasons stated in writing and made public, declines to accept them.

119. The Government should ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Notes

1/ The Constitutional Conference was comprised of "representatives" who were elected by about 350,000 voters (while there were over 68 million qualified voters), out of a population of 120 million Nigerians. In addition to these elected members, a further one third plus "special nominees" were included by the late General Abacha.

2/ Office for the Coordination of Humanitarian Affairs of the United Nations, Integrated Regional Information Network for West Africa, update 356 on events in West Africa, 9 December 1998.

3/ "Women police - Miscellaneous conditions of service", Regulation 124, Cap. 359, Laws of the Federation 1990. See also, Beasts of Burden: A Study of Women's Legal Status and Health Rights in Nigeria, Civil Liberties Organization, 1998, p. 24.

4/ For example, a high court had upheld the right of a father to force his 19-year-old daughter to marry a person against her wish. The court said: "there is a consensus of opinion ... that a father has the right to compel his virgin daughter to marry without her consent", Beasts of Burden ..., p. 19.

5/ African Charter on Human and People's rights, article 16 (1).

6/ The 1998 health budget (less than 5 per cent of the total budget) contrasts with the 23.08 billion naira budget for defence (9.8 per cent of the total).

7/ The statistics may be much higher. At the 5th International Congress to review Nigeria's maternal mortality profile, organized by the Society of Gynaecology and Obstetrics of Nigeria, Professor Wilfried Chukwidebelu of the University of Nigeria Teaching Hospital disclosed that the maternal mortality death at that hospital from 1991 to 1997 was a staggering 1,259 per 100,000 live births, nearly a five-fold increase over the 270 per 100,000 deliveries recorded between 1976 and 1985. See The Guardian, 29 November 1998.

8/ The Minister of Health, Professor Debo Adeyemi, admits that the Government's programmes to halt the spread of AIDS have failed. The Punch, 24 November 1998, p. 32.

9/ Public statement issued by the Chief Press Secretary to the Head of State, Monday, 9 November 1998, at the Aso Rock Villa, Abuja.

10/ A panel set up under the late General Sani Abacha's administration to investigate the activities of the Cental Bank of Nigeria discovered that this money had been misused. The panel reported that the money was never paid into the account of the Central Bank, but to a dedicated account accessible only to the former Head of State, General Ibrahim Babangida, and the Governor of the Central Bank. The panel noted that the misuse of the money amounted to "a gross abuse of public trust". (Statement made by Dr. Pius Okigbo, chairman of the panel, in September 1994, during the presentation of the panel's report to the late General Sani Abacha. The report of the panel was never published and the Government never issued a white paper on the report.)

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Iraq

Report submitted by the Special Rapporteur,
Mr. Max van der Stoel, in accordance with
Commission resolution 1998/65

GE.99-11044 (E)

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Introduction

1. The present report is submitted pursuant to paragraph 4 (a) of Commission on Human Rights resolution 1998/65.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. The Special Rapporteur notes that since his first visit to Iraq in January 1992, he has not been allowed to return. The Government of Iraq has refused, since 1993, to respond directly to the Special Rapporteur through correspondence. Moreover, the Government of Iraq has refused to cooperate with United Nations human rights mechanisms by allowing the stationing of human rights monitors throughout Iraq as requested by the resolutions of the General Assembly and the Commission on Human Rights. In assessing the veracity of information received, the Special Rapporteur considers its source or sources, its detail, and its context and then seeks corroborative information. While the Special Rapporteur is not able to determine definitively the veracity of all reports and allegations received, his accumulated experience leads him to conclude that it is important to report serious allegations which are prima facie credible insofar as they are consistent with past events and the established pattern within the country.

3. Notwithstanding the Government of Iraq's refusal to cooperate with the placement of human rights monitors inside Iraq, the Special Rapporteur was able to send a staff member from the Office of the High Commissioner for Human Rights (OHCHR) to Kuwait in order to receive information concerning the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait. The fate of this particular group of persons forms part of the mandate of the Special Rapporteur as a result of paragraph 3 (g) of Commission resolution 1998/65.

II. VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

4. During the period under review, the Special Rapporteur continued to receive numerous allegations of human rights violations affecting the Iraqi population living in the southern governorates, the Shiice religious community, the Kurds, as well as referring to a continuous campaign of executions in Iraqi prisons.

A. Extrajudicial, summary or arbitrary executions

5. The Special Rapporteur has already reported on the so-called "prison cleansing" campaign in his last reports to the Commission on Human Rights (E/CN.4/1998/67) and the General Assembly (A/53/433). He continues to receive reports referring to an execution campaign in Abu Ghraib and Radwaniyah prisons, including hundreds of executions in the last months of 1998. In support of these allegations, several lists of names totalling more than 200 detainees executed between October and December 1998 have been made available to the Special Rapporteur, bringing the total number of prisoners said to have been executed since autumn 1997 to 2,500. The lists give information on the identity of the victims including their names, their governorates and districts of origin, their ranks when they are army personnel, their dates of incarceration, as well as the articles of the Penal

Code under which they were convicted and sentenced to death. In some cases, the names of the army officers who have allegedly carried out collective executions is also mentioned.

6. As in the past, the reports indicate that people continue to be sentenced to death and executed because of their alleged participation in the uprising of March 1991. Supporting this allegation, a list of 125 prisoners reportedly executed on 1 October 1998 in Abu Ghraib prison includes 50 persons charged with participating in the 1991 popular uprising. Another list names 11 long-held prisoners who had been convicted for the same reason and were transferred on 23 November 1998 to the execution wing of Abu Ghraib prison awaiting their sentences to be carried out.

7. Another list of 81 prisoners reportedly executed since 13 December 1998 indicates that these detainees were executed on political grounds. The list also specifies that four of the executed were convicted under article 223 of the Penal Code which prescribes the death sentence for any person attempting to kill the President.

8. According to the reports received, membership with or sympathy for illegal political parties or opposition to the Government continues to be punished by the death penalty. The Special Rapporteur has received specific information (citing names, professions, places of origin, and places and dates of execution) alleging the execution of groups of persons for their opposition to the Government. Several of those reportedly executed held ranks in the armed forces, including some at high level. In several cases, it is also reported that the personal properties of those executed (and those of some of their immediate family members) were confiscated.

9. It is to be noted that the above-mentioned lists of 125 and 81 names of executed prisoners specify that the executions involved 29 and 18 army officers, respectively. It is believed that most of these executions are related to alleged opposition to or mutiny against the Iraqi leadership. Supporting these allegations, reports mention that, on 18 December 1998, five officers, including two generals, were executed for attempting a mutiny at the Al-Rasheed military base outside Baghdad. Also, the commander of Iraq's 11th Mechanized Division and an unspecified number of his staff were reportedly executed by General Ali Hassan Al-Majeed, supposedly for their insubordination relating to an order to attack Shiite civilians.

10. Finally, ill-treatment of prisoners and poor conditions of detention continue to be reported and to cause the death of prisoners. In mid-November 1998, 17 detainees reportedly died after being forced to donate blood. Their bodies were subsequently removed to Al-Madain district where they were buried.

B. Violations affecting ethnic and religious communities

1. The population of the southern marsh area

11. With regard to the population living in the southern marshes, there appears to be a resurgence of grave violations of human rights committed by the Government of Iraq.

12. The most blatant violations of human rights reportedly being perpetrated by the Government of Iraq are military attacks against civilian settlements in the southern governorates of Al-Nassiriya, Amara and Basra which are reported to have resumed in late August 1998 and reached a peak in November. As in the past, these military operations have been allegedly related to the purported need to seek out military deserters who had sought refuge within the tribes of the marshes. It is reported that there were repeated, intense artillery and mortar attacks followed by ground-force attacks on villages and towns in several areas of the three governorates, in particular in the Al Jazira area near Al Rifa'i city between Al-Amara, Al-Nassiriya and Kut governorates and in Suq Al Shuyukh and Chibayish districts in Al-Nassiriya governorate. The reports indicate that the operations targeted a large number of tribes, including the Al Jwaibir, Al Rabma, Al Bu Salih and Asakira tribes.

13. It is further reported that the President's son, Qusay Saddam Hussein, and the President's cousin, Ali Hassan Al-Majeed, supervised part of the operations, in particular in late September and early November 1998. The Special Rapporteur notes that Ali Hassan Al-Majeed previously directed military campaigns against populations in the southern marshes as well as the Anfal operations against the Kurds and others in northern Iraq.

14. The Special Rapporteur is of the opinion that such indiscriminate and full-scale attacks are both inconsistent with and disproportionate to the alleged motive of seeking army deserters. They are incompatible with the obligation to provide due process of law inasmuch as they penalize innocent persons and do not provide accused persons with fair trials. Furthermore, they exceed by far the standards detailed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and in the Code of Conduct for Law Enforcement Officials. Finally, they clearly violate the right to life and physical integrity included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

15. According to the information received, numerous other human rights violations followed the military operations, stemming from the repressive measures ordered by the leadership. In particular, it is reported that government forces arrested hundreds of citizens, in particular in the region of Suq Al Shuyukh and Al Rifa'i in the governorate of Al-Nassiriya. One report indicates that in the autumn governmental forces arrested more than 70 persons belonging to the Al Hassan tribe. Reports further indicate that although army deserters were reportedly among the persons arrested, those arrested also included innocent civilians, including the elderly, women and children. Reports also indicate that, on 22 November 1998 (a holy day for the Shiite community), government forces undertook mass arrests of young people in the city of Kerbala where some clashes had broken out. The number of arrests is reported to be in the hundreds with prisoners taken to detention centres in Baghdad and to prisons of the 4th Corps and the Security Directorate in Al-Amara.

16. It is also reported that the very purpose of some of the arrests directly ordered by President Saddam Hussein's son, Qusay, is to intimidate the population of the southern marshes by taking hostages. It is reported

that the concerned relatives, recalling the Anfal operations, fear for the safety and physical integrity of the persons detained incommunicado and whose fates have remained unknown since their arrest.

17. As part of this campaign of repression against the inhabitants of the southern marsh region, reports indicate that government forces have burned houses and fields while other houses have been demolished by bulldozers. In this connection, the Special Rapporteur is in possession of a list of 64 persons, mainly from the Al Jwaibiri tribe, whose houses were razed by government forces. Some reports indicate that villages belonging to the Al Juwaibiri, Al Shumaish and Al Musa and Al Rahma tribes were entirely destroyed. Following the burnings, soldiers are said to have forcibly expelled inhabitants from the burnt areas. Government forces are also said to have confiscated entire villages and community lands with some of them being turned into military outposts. Finally, government forces have reportedly cut the water supply to certain areas, affecting the population, livestock and agriculture. These combined measures have reportedly led to the forced relocation of entire families to other regions, in particular along the border with the Islamic Republic of Iran.

18. As part of the repressive measures, it is reported that the leadership established an ad hoc Executions Committee on the road between Nassiriyah and Suq Al Shuyukh for the purpose of catching and executing insubordinate officers and soldiers who refused to follow orders to beat civilians and had deserted.

19. It is further feared that there were summary executions of numerous persons by hanging or shooting in the governorates of Al-Amara and in Basra in November 1998 subsequent to the visits of Qusay Saddam Hussein and Ali Hassan Al-Majeed. The bodies of three persons executed during this campaign were reportedly seen hanging on Amara bridge.

2. The Shiite community

20. In his interim report to the General Assembly, the Special Rapporteur reported on the murders of two internationally respected Shiite religious scholars: Grand Ayatollah Shaykh Mirza Al-Gharawi and Ayatollah Shaykh Murtada Al-Burujerdi. In a letter addressed to the Government of Iraq, the Special Rapporteur expressed his concern that the murders might be part of an organized attack by the Iraqi Government against the independent leadership of the Shiite community and called upon the Government of Iraq to carry out thorough and impartial investigations. However, the Government of Iraq has not responded to the Special Rapporteur.

21. As part of a policy of intimidation against the religious community, eight Shiite clerics, whose names are available to the Special Rapporteur, have allegedly been recently sentenced to death. Four of them were reportedly charged with participating in ceremonies commemorating Imam Hussein.

22. Moreover, according to information received, the office of Grand Ayatollah Sheikh Bashir Najafi was attacked on 6 January 1999 by a group of armed men while he and members of his seminary were performing

religious duties. The attack, which included use of a hand-grenade, resulted in the death of three persons and injury to a number of members of the seminary, including the Grand Ayatollah.

23. In view of the systematic assassinations, attacks and threats carried out against the Shiite leadership since the March 1991 uprisings, it is believed that the recent attack against Grand Ayatollah Sheikh Bashir Najafi is part of a planned policy aimed at discouraging religious leaders from freely expressing their opinions and religious beliefs. The Special Rapporteur recalls that the fates of more than 100 clerics and religious scholars who were taken into custody by the Government in 1991 have not been clarified.

3. The Kurds

24. Since the submission of his previous report to the Commission on Human Rights, the Special Rapporteur has continued to receive allegations describing the deteriorating human rights situation of the Kurds of the governorate of Kirkuk. In particular, the Government of Iraq continues to implement its policy of Arabization through a process of internal deportation aimed at the forced relocation of the non-Arab population, especially the Kurds, Turkmen and Assyrians living in Kirkuk. However, simultaneous campaigns are reportedly also under way in the districts of Khanaqin, Makhmour, Sinjar and Sheikhan.

25. Reports of discriminatory measures against non-Arab citizens and forced Arabization are believed to be part of a general policy aimed at decreasing the proportion of non-Arab citizens in the oil-rich region of Kirkuk. Non-Arab citizens are reportedly denied equal access to employment and educational opportunities and are also physically threatened. For example, employment in the public administration, including the national petroleum company (the largest employer in the region), is reportedly effectively reserved for citizens of Arab origin. Deterrent measures such as relocation of Kurdish elementary schoolteachers and low-ranking civil servants to areas outside Kirkuk are also part of the regime's policy of modifying the demography of the region.

26. Other discriminatory measures are applied by the local administration of Kirkuk: Kurds are reportedly not permitted to sell their homes to anyone other than Arabs. New construction or renovation of Kurdish property is said to be forbidden and Kurds are prevented from registering or inheriting properties. At the same time, Arab settlement is favoured. The Revolution Command Council has mandated that the State must provide new housing and employment to more than 300,000 Arab residents resettled in Kirkuk. In the past several months, at least seven new Arab settlements have been built in Kurdish areas on properties confiscated mainly from ethnic Kurds. The new settlements are given Arab names and local merchants are instructed to give their companies Arab names. Finally, the governorate's administrative offices are being moved to the Arabized side of the city, as are the headquarters of major professional and political organizations.

27. As part of the Arabization process, the Government of Iraq continues to deport Kurdish and Turkmen families. Correspondence dated 13 July 1998

between the Confidential Correspondence Section of the governorate of Al Ta'ameem and the Leadership of the Al Ta'ameem Branch of the Ba'ath Socialist Party made available to the Special Rapporteur shows that this local administration was responsible for the deportation of 545 families "recently included in the deportation process". Other Kurdish families are being transferred to southern governorates. Moreover, it is reported that Kurds who leave Kirkuk are not allowed to return. The Special Rapporteur is in possession of a copy of correspondence dated 7 January 1998 from the Governor of Diyala to the Leadership of the Diyala Branch of the Ba'ath Socialist Party which states that punitive action is to be taken against any local officials who fail to stem the flow of Kurdish families into their territory, and that any citizen providing employment, food or shelter to a newly arriving Kurd is to be arrested.

28. The Government of Iraq has reportedly been using other measures aimed at encouraging departures and preventing displaced persons from returning. The Government has reportedly declared the area around Kirkuk, including the oil-fields and production facilities, a military and security zone and has mined the area to impede transit. The roads into the area have been heavily fortified with military checkpoints. The regime has also changed the administrative composition of Kirkuk governorate, eliminating four predominantly Kurdish districts and effectively reducing the Kurdish population to minority status. Most recently, the Iraqi Government has reportedly evicted the residents of Kirkuk's citadel and begun the demolition of this ancient Kurdish site, claiming that the envisioned new construction will generate considerable tourist revenue.

III. THE RIGHT TO FOOD AND HEALTH CARE

29. Since the Special Rapporteur took up his mandate in 1991, he has constantly reported on the food and health situation in Iraq. The Special Rapporteur has concluded that the Government of Iraq has failed to comply with its obligations under articles 2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights insofar as it has not taken appropriate steps "to the maximum of its available resources", including "through international assistance and cooperation", with a view to achieving the full realization of the right to an adequate standard of living, including adequate food, clothing, housing and good health, and to the continuous improvement of living conditions. In this connection, the Special Rapporteur has stressed, on the one hand, the refusal of the Government of Iraq to take advantage of the "oil-for-food" solution until 1996 and, thereafter, its lack of full cooperation in its implementation, and, on the other hand, the Government's failure to ensure the end of the sanctions regime by complying with all relevant Security Council resolutions.

30. On 19 November 1998, the Secretary-General issued a report (S/1998/1100) on the implementation of the humanitarian programme in Iraq. The Special Rapporteur noted that the "oil-for-food" programme has helped to provide a more adequate food basket for the Iraqi people. For the first time since the beginning of the programme, the full rations of 2,030 kilocalorie per person per day were distributed during three consecutive months and in 97 per cent of households consulted in the centre and south the food baskets were received on time. But given the complex interplay of food supply, health and hygiene

issues, the full nutritional benefit of extra foodstuffs could not yet be realized - especially taking into account real and significant differences in need throughout the population.

31. In his report the Secretary-General reported that the latest survey, based on WHO/Centres for Disease Control and Prevention (CDC) reference criteria, indicated that during the past year general malnutrition among infants had stabilized at 14.7 per cent and at around 25 per cent for children under five. This indicates that, following the implementation of Security Council resolution 986 (1995), previously rising levels of malnutrition appear to have stabilized. However, in the centre and south of Iraq, infant malnutrition continues to be of grave concern. In the three northern governorates, the improvement noted from 1994 onwards has been sustained. With regard to the high prevalence of malnutrition, especially among children, the Secretary-General expressed his regret that, to date, the Government of Iraq had not sent any applications for targeted nutrition supplies, i.e. protein biscuits and therapeutic milk, although they were included in the distribution plan.

32. Moreover, household visits by observers from the World Food Programme (WFP) in the south and centre of Iraq showed nearly two thirds of households reporting that the food basket lasted only 20 days or less. It was also reported that, in the centre and south of Iraq, food prices on the open market had risen, to the disadvantage of the very poor, due to major shortages of inputs for domestic food production.

33. It was also reported that United Nations observers had endeavoured to verify that distribution and access to the rations was equitable in Nasiriyah in southern Iraq, in response to allegations of involuntary population displacements in September 1998. The report indicated that initial results were inconclusive. The Special Rapporteur has already reported on the discriminatory registration procedure in several previous reports. Considering that a certificate attesting more than six months' residence is compulsory to be entitled to the food ration, it is highly unlikely that the forcibly displaced families in the southern governorates are actually receiving their rations.

34. In the health sector, an increasing influx of supplies had expanded the range of treatments available and drugs were more widely available at all levels of the health-care system. Hospital inpatient departments were generally receiving sufficient quantities of medicines and supplies, and in all types of health facilities there had been a steady increase in patient attendance. But the poor condition of facilities continued to pose a genuine health hazard. It was reported that the number of surgical operations increased by 33 per cent from January to August 1998. Preventive health care, however, had not received appropriate attention. In this field the full range of urgently needed essential drugs was still not available on a regular basis, mostly because of poor procurement planning and stock management. Major problems were also encountered in ensuring the timely distribution of the hospital equipment that had been received under the programme.

35. The non-availability of clean water remained a serious problem in some areas. Since the source of most of the drinking water in Iraq is

surface-water coming from the Tigris and Euphrates rivers, most of the water systems require liquid chlorine and alum treatment. According to a UNICEF document addressed to potential donors in June 1998, Iraq previously had an advanced water treatment system serving urban and major rural areas. However, after 1990, the per capita share of water decreased drastically from 330 to 180 litres per day in Baghdad city, from 270 to 135 litres per day in other urban areas and from 180 to 60 litres per day in rural areas. The quality of available water has also greatly deteriorated, due to the progressive deterioration both of water treatment plants and the water distribution network. In late 1997 it was estimated that the sector would require $500-600 million for the most urgent rehabilitation. Although more than $250 million have been allocated to the sector since the beginning of the programme, only $11.6 million in supplies (less than one half of 1 per cent) have actually reached the intended sites because of the incompatibility between supplies delivered and contracts signed, and the lack of cash, transportation and qualified technicians required to implement the programme. Inputs therefore tend to have a localized impact, which cannot offset the continuing structural deterioration of the sector as a whole. Nevertheless, there has been some improvement, especially in water quality, as increased quantities of chlorinated water are being produced. However, the decaying distribution network precludes guaranteed safe drinking water and water-borne diseases continue to be a major threat.

36. On 17 December 1998, a joint military operation, conducted by United States and United Kingdom forces, resulted in four days of air strikes against Iraq. According to media reports and local sources, targets in and around the cities of Baghdad, Basra, Kirkuk and Tikrit were subjected to aerial bombardment. However, the civilian populations living in these cities appeared to continue their daily occupations; the markets remained open. Official Iraqi reports indicate that a warehouse was hit, destroying 2,600 tonnes of rice, and that an agricultural high school and the Ministry of Labour and Social Affairs were also hit. As well, numerous schools, clinics and hospitals close to buildings which were hit by missiles suffered broken windows, displaced ceiling panels and damaged light fittings. The Government of Iraq has complained about substantial damage to civil structures and loss of life.

37. The Special Rapporteur notes that the United Nations personnel on the ground have not been allowed by the Iraqi authorities to carry out an assessment of the damage caused by the air strikes especially any direct or collateral damage to facilities of the United Nations Office for the Iraq Programme (OIP) which fall under the mandate of the United Nations humanitarian programme. In a note verbale dated 26 December 1998 addressed to the United Nations Humanitarian Coordinator, the Minister for Foreign Affairs of Iraq stated, inter alia, that the conditions experienced by Iraq did not permit an assessment of the damage and that Iraq would conduct such an assessment in the manner it deemed appropriate. Consequently, it was not possible to carry out the assessment requested by Security Council members. Only local staff from UNICEF, WFP and the Geographical Observation Unit in Iraq made a limited assessment.

38. On the general humanitarian situation, the Special Rapporteur was informed that during the above-mentioned period all United Nations

observations were suspended. However, the implementation of the distribution plan was not affected by the events nor were oil exports interrupted. On 12 January 1998, United Nations humanitarian observation activities resumed - although international observers were deployed on day trips only. The areas therefore left unobserved included the southern governorates.

39. Information provided to the Special Rapporteur indicates that the food stock levels were much improved. With regard to the food basket, the Special Rapporteur has been informed that as of January 1999 the government ration was to include, for the first time, full-cream milk, cheese and weaning cereals. The allocations provided in Distribution Plan for Phase IV ($10 million for weaning cereals and $178 million for full-cream milk and cheese) have been fully contracted.

40. With regard to the provision of health-care services, there has been no noticeable change. However, stocks of medicines and medical supplies have not been distributed as efficiently as required and the full nutritional benefit of extra foodstuffs has not yet been realized. Unfortunately, United Nations reports indicate that a very large quantity (over $250 million) of available medical supplies remain stacked in warehouses.

41. The Special Rapporteur is concerned that the Government of Iraq has still not taken full advantage of the food and health-care resources available through the "oil-for-food" arrangement. For example, as already indicated above, the Government of Iraq has not yet concluded contracts to the full value of available resources for the purchase of high protein biscuits or therapeutic milk. Another example involves medicines for the treatment of leukaemia: there have so far been two contracts approved by the 661 Committee (under Phase III) which were only recently cleared for funding. More generally, OIP reports that it continues to be concerned about the rate of distribution of medicines and is working with the Government on this issue.

42. Overall, the Special Rapporteur observes that there persist problems with the adequacy and equity of distribution of available resources. The Special Rapporteur notes that distribution priorities and criteria are generally established by the Government of Iraq (see, for example, document OIP/AOS/2/Add.1, para. 1), and "equity" is generally assessed within those same parameters established by the Government (see paragraphs 33 and 34 of WFP's background note appended to the aforementioned OIP report). At the same time, OIP reports that there are variations even within the terms of the Government's own criteria, indicating a worse situation in the southern governorates (e.g. the especially poor sewage systems in the 10 most southern governorates, as reported in document OIP/AOS/2 at paragraph 16). This is apart from the broader situation and the relative effects of the market and of government programmes other than the United Nations programme: again, the available resources are not being channelled to people in the southern governorates, who are the worst off and in the greatest need. In this connection, the Special Rapporteur notes the Government's refusal to provide OIP with any information on its efforts to supplement the food basket (as pointed out by Mr. Benon Sevan, Executive Director of the Iraq Programme, to the Security Council on 23 November 1998). Further, the Special Rapporteur notes the new guidelines established by the Iraqi Ministry of Trade according to which United Nations humanitarian observers are prohibited from knocking on

doors to initiate interviews with householders, thus limiting the ability of the United Nations fully to assess the real adequacy and equity of food supplies and health care.

43. The Special Rapporteur remains concerned about the adequacy of the resources made available through the "oil-for-food" programme and by the Government of Iraq to meet the nutritional and health-care needs of the population throughout the country. The Special Rapporteur underlines that, according to article 11 of the International Covenant on Economic, Social and Cultural Rights, Iraq is to act "individually and through international cooperation" to realize the right of everyone to an adequate standard of living (including adequate food), while article 12 of the same Covenant binds Iraq to act in the same way to achieve the full realization of the right of everyone to the "highest attainable standard of physical and mental health". The Special Rapporteur observes that the fulfilment of these obligations must respond to real needs which no doubt vary among the overall population. In this respect, insistence by the Government of Iraq on distribution of an identical food basket throughout the country, notwithstanding considerable variations in real needs, cannot be equated with an "equitable" distribution nor with fulfilment of Iraq's specific obligations under international human rights law. As previously reported, the Special Rapporteur remains concerned that the greater needs among the population of the southern governorates, in terms of their specific nutritional needs and their comparative inability to obtain supplies from the market, are not adequately addressed either under the terms of the "oil-for-food" programme or under other programmes administered by the Government of Iraq from its other resources.

IV. RIGHTS OF THE CHILD

44. On 23 and 24 September 1998, the Committee on the Rights of the Child established under the Convention on the Rights of the Child considered the initial report of the Government of Iraq on the implementation of the Convention within its jurisdiction (CRC/C/41/Add.3). Following two days of debate, the Committee issued, on 26 October 1998, its concluding observations (CRC/C/15/Add.94).

45. The Committee took note of the fact that the Convention is self-executing within the State party and that its provisions may be invoked before the courts. It also welcomed the development of a National Plan of Action for Children. However, the Committee was still concerned that the provisions and principles of the Convention were not fully reflected in law and that law enforcement in all areas covered by the Convention should be strengthened.

46. The Committee expressed concern that insufficient attention has been paid to allocating budgetary resources in favour of children to the maximum extent available and, where needed, within the framework of international cooperation and recommended that the Government of Iraq prioritize budgetary allocation to ensure the protection of the economic, social and cultural rights of children, especially taking into account articles 2, 3 and 4 of the Convention. In this regard, the Committee also recommended that the State party seek to eliminate the disparities between urban and rural areas and between governorates.

47. In the light of the provisions and principles of the Convention, especially the principles of the best interests of the child (art. 3) and the right to life, survival and development (art. 6), the Committee expressed its deep concern at the early legal minimum age of voluntary enlistment into the armed forces and recommended that the State party raise the age in the light of international human rights and humanitarian law.

48. The Committee also expressed concern that corporal punishment is not expressly prohibited in domestic legislation and recommended that the State party take all appropriate measures, including of a legislative nature, with the aim of prohibiting corporal punishment at all levels of society.

49. The Committee noted with grave concern the deteriorating health situation of children, particularly the high and increasing infant and child mortality rates and serious long-term malnutrition, aggravated by poor breastfeeding practices and common childhood diseases.

50. The Committee was also concerned at the number of children leaving school prematurely to engage in labour (particularly girls) and recommended that all appropriate measures be taken to provide equal access to education and to encourage children (particularly girls) to stay in school and to discourage early entry into the labour force.

51. The Committee noted with concern that the economic exploitation of children has increased dramatically in the past few years. In this regard, the Committee expressed its concern about the existing gap between the age at which compulsory education ends (12 years) and the minimum legal age for access to employment (15 years).

52. The Committee was further concerned at the situation with respect to the administration of juvenile justice and in particular its incompatibility with the Convention, as well as other relevant United Nations standards. The Committee recommended that the Government of Iraq consider taking additional steps to reform the system of juvenile justice in the spirit of the Convention (in particular articles 37, 40 and 39) and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. The Committee stressed that particular attention should be paid to considering deprivation of liberty only as a measure of last resort and for the shortest possible period of time, to the protection of the rights of children deprived of their liberty, to due process of law and to the full independence and impartiality of the judiciary.

V. PERSONS MISSING AS A RESULT OF THE IRAQI OCCUPATION OF KUWAIT

A. Investigation of cases

53. A staff member from the Office of the High Commissioner for Human Rights, acting as a human rights monitor in the framework of Commission resolution 1998/65, undertook a visit to Kuwait in December 1998. During his stay in Kuwait, the monitor met with a wide variety of persons of special

relevance to the continuing problem of Kuwaiti and third-country nationals who disappeared during or subsequent to their arrest and detention by Iraqi forces illegally occupying Kuwait between 2 August 1990 and 26 February 1991. Among those interviewed were representatives of the Kuwaiti National Committee for Missing and Prisoner of War Affairs and family members of the Kuwaitis who are missing. In total, the monitor interviewed more than 20 family members of the missing Kuwaitis, including persons who had remained in Kuwait during the occupation.

54. It is to be noted that, while the original number of those missing after the withdrawal of the Iraqi occupying forces was in the thousands, over time concern was focused on a list established by the Government of Kuwait comprising 625 individual files of which 604 cases still remain unresolved. The list had been compiled by the Kuwaiti Government's National Committee on the basis of specific guidelines established by the International Committee of the Red Cross (ICRC). The files were compiled taking into consideration three different sorts of evidence: (a) accounts from family members, of whom several claim to have witnessed the arrest of their relatives; (b) testimonies of former detainees (including foreigners) who claim to have seen some of those who have disappeared inside prisons or detention centres; and (c) Iraqi documents relating to those missing, which were said to have been found after the withdrawal of the Iraqi forces occupying Kuwait.

55. The cases on the list of missing Kuwaitis concern persons from various social strata and of different ages; most (90 per cent) of the disappeared on the list are of Kuwaiti nationality. The majority are civilians, including youths and a number of elderly persons. The total includes seven women. Among those listed are also persons of special status, such as the case of a Ba'athist and former member of the Kuwaiti Parliament, Mr. Al-Sanea, and his family. The majority of the cases checked are well documented.

B. Findings

56. The information received confirms in a wholly consistent manner the testimonies and other evidence previously reported. According to the testimonies recently and previously received, the procedures used by Iraqi authorities to arrest Kuwaiti citizens varied and arrests took place in all kinds of locations. While each case has unique elements, most cases involved one of the following: assaults on private homes; arrests by Iraqi patrols at Saudi-Kuwaiti border crossings; and arrests at Iraqi checkpoints inside occupied Kuwait.

57. Assaults on private homes usually took place with Iraqi soldiers (who were often recognized as Republican Guards) first surrounding the house. Members of either Iraqi Military Intelligence or the Security Services would then carry out the arrest during a search of the house. Beatings during arrest were said to be commonplace. Generally, these raids were said to have been based on precise information with the Iraqi forces frequently reported to be looking for specific persons. Several of the persons arrested were known to belong to opposition groups. Some of them were released later, others escaped during the March 1991 uprisings in southern Iraq and others remain missing today.

58. With respect to arrests by Iraqi patrols at Saudi-Kuwaiti border crossings, many families were outside or quickly fled Kuwait when the invasion took place on 2 August 1990. As most of the borders were then closed, except that with Iraq, people fleeing the occupation were forced to leave Kuwait illegally through the desert. However, once the Iraqi forces had been deployed along the Kuwaiti borders, persons seeking to return to Kuwait are believed to have been arrested while crossing the Saudi-Kuwaiti frontier. Despite the fact that these cases are less well documented than others because there were no witnesses to the arrests, testimonies have been received from former prisoners of war stating that they had seen the arrested persons inside prisons or detention centres in Iraq.

59. Several persons were arrested at checkpoints deployed on the main streets of occupied Kuwait to prevent freedom of movement and to control real or potential resistance. Some of the arrested persons have since disappeared.

60. Many people, both Kuwaitis and non-Kuwaitis, were taken prisoner during the fighting that accompanied the invasion and its immediate aftermath. Those imprisoned included members of the armed forces as well as people working in the Kuwaiti administration. Military and administrative personnel captured during this early period were taken to Iraq and some of them were released after the liberation of Kuwait when the ICRC visited detention centres in Iraq.

61. A second group of persons was arrested as the Iraqi occupation continued. Some of this second group were members of the military or police forces while others were civilians (e.g. students and public administrators), including foreigners allegedly involved in opposition activities.

62. A third group is said to have been arrested at the very end of the occupation. Most of these persons were reportedly Kuwaitis arrested in public places.

63. As for the alleged reasons for the arrests, it appears that in most cases the persons said to have been arrested were suspected of some form of opposition against the Iraqi occupation. Resistance to the Iraqi occupation was very largely interpreted by Iraqi forces without any distinction as to whether it was passive or active, violent or non-violent opposition. The following reasons for the arrests were reported: (a) possessing arms or ammunition; (b) forging driving licences, car registration books, ID cards; (c) publishing and distributing resistance newsletters or spraying anti-Iraqi graffiti on walls. In some cases, people were apparently arrested for belonging to humanitarian groups and solidarity associations. People distributing food and basic needs to citizens and doctors who treated resistance members were also said to have been arrested. As mentioned above, another group was allegedly arrested while crossing the Saudi-Kuwaiti border, perhaps on charges of illegal exit or entry. Among the documented cases, there are only a few where no alleged reason for arrest is given.

64. Interviewed persons consistently reported that those arrested did not have access to lawyers and were not allowed to contact their families. Families looking for arrested relatives were normally not informed about their whereabouts, except in a very few cases.

65. Today, well over eight years after the Iraqi occupation, the main preoccupation of the relatives of those who disappeared, is the present whereabouts of their loved ones: are they still detained in Iraq (as was the case for many who were subsequently released or who escaped), or, in the event that they have been released or have perished, what details can be communicated to the distraught families?

66. The Special Rapporteur observes that the human tragedy of this unresolved matter is enormous, both in terms of any remaining detainees who are no doubt suffering untold emotional anguish and possibly enduring physical hardship, and in terms of the families of the missing persons who are suffering severe mental distress because they are without knowledge of the whereabouts and condition of their loved ones. The relatives of the missing persons also report that they are regularly subjected to extortion attempts that play upon their desires to learn something about those missing. As a result of the never-ending uncertainty and the unresolvable pain and depression, the social lives, employment performance and personal relationships of family members have all been damaged. This says nothing about the material losses, especially for families who have lost their main breadwinners. In addition, it is to be observed that such a large number of cases for a small country constitutes a source of suffering and loss for the Kuwaiti people as a whole and an unhealed wound inflicted by the illegal Iraqi occupation.

C. The institutional framework for continuing follow-up

67. The international community responded to this specific humanitarian problem by creating, in March 1991, a Tripartite Commission on Missing Persons pursuant to Security Council resolutions 686 (1991) and 687 (1991). Chaired by the ICRC, the Tripartite Commission is composed of the Governments of Kuwait, Saudi Arabia, the United States of America, the United Kingdom and France on one side, and the Government of Iraq on the other. At the first meeting of that Commission, all members signed a memorandum committing themselves to the full implementation of the provisions of the Geneva Conventions of 1949, to the terms of the above-mentioned Security Council resolutions, and to the presentation of a complete list of the names of the missing persons and other detainees, preparatory to securing their prompt release.

68. Following the early meetings of the Commission, a number of "missing persons" were handed over to the ICRC. Others were freed during the uprising in southern Iraq during the turmoil that followed the liberation of Kuwait. Some 6,000 Kuwaiti persons found their way home through these channels (5,772 repatriated by the ICRC and about 500 by their own means). After the initial successes, it became evident that many persons were still missing. In April 1991, under the direction of the ICRC, the Commission adopted a Plan of Action for the repatriation of mortal remains and the tracing of those still unaccounted for.

69. To the knowledge of the Special Rapporteur, the Government of Iraq has failed to demonstrate a genuine concern for those who are still missing. Indeed, between October 1991 and July 1994, it even failed to attend the

meetings of the Tripartite Commission. In July 1994, the Government of Iraq renewed its participation in the framework of the Commission, only to fail again in recent months to attend the scheduled meetings.

70. On 8 December 1994, the Tripartite Commission established a Technical Subcommittee to conduct the detailed technical work relating to investigations and inquiries concerning the missing persons. The Technical Subcommittee is entrusted with the tasks of accelerating the search process, facilitating exchanges of information related to the established and detailed case-files, implementing follow-up action based on the results of search activities and building confidence among the parties.

71. While the Tripartite Commission is to meet every three months in Geneva, the Technical Subcommittee is to meet on a monthly basis on both sides of the Iraqi-Kuwaiti border. Since August 1995, it has held more than 30 meetings, but the meetings have failed to produce significant results.

72. According to the information received, between August 1994 and July 1995, the Government of Iraq supplied incomplete replies to 112 individual files. From July 1995 to the end of 1998, the Government supplied a total of 14 more replies; the last was received over two years ago. Moreover, Iraq has failed to produce needed additional information to clarify these cases even though, in the incomplete replies provided, Iraq admitted having seized and deported most of the prisoners during its occupation of Kuwait. The lack of replies on the 479 unresolved files is another example of the failure of the Government of Iraq to respect a mandated exchange of information and to abide by its own undertakings.

73. In fact, to date, out of the 625 case-files, only three cases have been clarified. In one case, the Iraqi Government admitted that a Kuwaiti prisoner died in jail during the occupation and was buried in Kuwait; for 14 months after receiving this information, Iraq refused to send someone to Kuwait to help locate the gravesite, and when it finally agreed to do so, its envoys were unable to help. (It took another year before the Iraqi authorities agreed to send one of the persons who actually participated in the burial, who in any case failed to identify the place.) Until very recently, the Iraqi authorities have consistently rejected the Subcommittee's requests to meet Iraqi witnesses or to contact them through the ICRC, alleging that they were either dead or unknown to authorities.

74. For almost all the cases to which the Government of Iraq has so far responded, the replies regarding the individual files are reported to be evasive. Indeed, based upon information received during the mission of the United Nations monitor to Kuwait, despite the Iraqi authorities admitting to having arrested and detained some of the missing Kuwaitis, the Government of Iraq claims to be ignorant of the specific relevant authority or military unit operating at the time and place where the person disappeared. The Government further claims that the files that could have been useful to determine the fate of the missing persons were destroyed during the Iraqi retreat from Kuwait and that many of the relevant units were subsequently dissolved and many of their members retired from the armed forces. Therefore, the Government of Iraq maintains, based upon information collected verbally from

the responsible officers after the 1991 uprising in southern Iraq, the detainees must have escaped in the confusion that prevailed in the southern governorates at the time.

75. Based upon information received by the Special Rapporteur, the specific military units responsible in the areas where the arrests and disappearances occurred have now resorted to pro forma responses, admitting only to having arrested and detained some of the still-missing Kuwaitis. Some have participated in initial investigations into some of the cases.

76. The Special Rapporteur observes that the Government of Iraq has failed to respect its obligations to cooperate with the Tripartite Commission or its Technical Subcommittee. Specifically, in recent months the Government of Iraq has refused to attend the scheduled meetings of either body (see, for example, ICRC Press Release No. 99/07 of 2 February 1999). The Government of Iraq has explained that the basis for its refusal to participate is its objections to the participation of the representatives of the United States of America and the United Kingdom (see the Press Release of the Permanent Mission of Iraq to the United Nations of 3 February 1999). The Special Rapporteur notes that the Government's refusal to cooperate in this matter is contrary to the provisions of paragraph 30 of Security Council resolution 687 (1991).

D. Conclusions

77. There can be no doubt that many persons disappeared during or subsequent to the Iraqi occupation of Kuwait. Insofar as the disappearances occurred during the illegal Iraqi occupation of Kuwait, there can also be no doubt of the general responsibility of Iraq for the fate of these persons and for the effects of their disappearance on their families. Detailed testimonies and other corroborative evidence further establishes the specific responsibility of Iraqi forces and authorities in relation to many individual cases. From the point of view of the missing and their relatives, however, the question arises whether these persons are still detained in Iraq.

78. The Special Rapporteur stresses that Iraq is under an obligation to provide substantive replies on the individual files without further delay. It is to be recalled in this connection that, in its resolution 46/135, the General Assembly called upon Iraq in the following specific terms to cooperate in the search for those who are missing:

> "4. ... to provide information on all Kuwaiti persons and third country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and ... to release these persons without delay;
>
> "5. ... to provide ... detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;
>
> "6. ... to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;

"7. ... [to] cooperate with and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons."

79. The Special Rapporteur observes that, in accordance with the applicable rules of international law, Iraq must account for those who were arrested by its forces. If Iraq is still holding prisoners of war and civilian internees, a premise the Iraqi authorities deny, several basic human rights embodied in the International Covenant on Civil and Political Rights would be violated. In any case, Iraq has failed:

(a) To inform families about the whereabouts of persons arrested in Kuwait, or to give arrested persons the right to contact their families;

(b) To provide information about death sentences imposed on prisoners of war and civilian detainees, as required by articles 101 and 107 of the Third Geneva Convention of 12 August 1949 and articles 74 and 75 of the Fourth Geneva Convention of 12 August 1949;

(c) To issue death certificates for deceased prisoners of war and civilian internees and to provide information about graves in accordance with articles 120 and 121 of the Third Geneva Convention of 12 August 1949 and articles 129 to 131 of the Fourth Geneva Convention of 12 August 1949.

80. To comply at least with the above obligations, the Government of Iraq has the responsibility to do everything within its powers to explain the fate of the hundreds of persons who remain missing as a result of its illegal occupation of Kuwait. In view of the Government's failure to come forth with adequate information, it should give every opportunity for independent and impartial third parties, such as the ICRC, to search within Iraq; this would entail full and free access to all places and persons of interest, at least according to standard ICRC practice.

81. In addition to the violations of international humanitarian law referred to above, the Government of Iraq has failed to demonstrate genuine concern for those who remain missing insofar as it has yet to participate fully and in a cooperative spirit either with the Governments involved or with the international humanitarian organizations that are seeking to resolve the cases on behalf of the next of kin. In particular, the Government of Iraq is failing even to attend the meetings of the Trilateral Commission established pursuant to the ceasefire that ended the armed conflict following the liberation of Kuwait.

VI. CONCLUSIONS AND RECOMMENDATIONS

82. At the beginning of 1992, the Special Rapporteur concluded that the gravity of the human rights situation in Iraq had few comparisons in the world since the end of the Second World War. The Special Rapporteur regrets that since then he has had no cause to change his view. The prevailing regime in Iraq has effectively eliminated the civil rights to life, liberty, physical integrity, and the freedoms of thought, expression, association and assembly; the rights of political participation have been flouted, while all available

resources have not been used to ensure the enjoyment of economic, social and cultural rights. Indeed, the Special Rapporteur has concluded that the politico-legal order in Iraq is not compatible with respect for human rights and, rather, entails systematic and systemic violations throughout the country, affecting virtually the whole population. In particular: President Saddam Hussein exercises executive and legislative power with judges and magistrates essentially answerable to him; the armed forces, the police and Ba'ath agents are at the service of the President; the courts are subject to the executive branch; political parties are banned, except for the Ba'ath Party which is identified with the State; there is no freedom of speech or action since the mere suggestion that someone is not a supporter of the President carries the prospect of the death penalty; and there is no freedom of information on radio or television, the most popular public media.

83. The established State structure, based on an omnipresent State party, the absence of a short-, medium- or long-term democratic project, and the fact that there is no institution capable of controlling the abusive exercise of power all lead the Special Rapporteur to conclude that the Iraqi people do not enjoy, and will not enjoy in the foreseeable future, respect for their human rights.

84. The Special Rapporteur observes that the continuing repression by the Government of Iraq of the civilian population of Iraq is in violation of Security Council resolution 688 (1991) which mandated "that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression" (para. 2). In addition, Iraq's failure to resolve the outstanding cases of the over 600 persons of Kuwaiti and third-country nationality who disappeared during or subsequent to Iraq's illegal occupation of Kuwait and who are still missing is in violation of Security Council resolution 687 (1991).

85. With regard to the last matter, the Special Rapporteur recommends the following:

(a) The Government of Iraq should release immediately all those who are being held and it should reveal the names of all those who have died in its custody, in order to relieve the suffering of the relatives of the disappeared. In the cases of those who have died, the Government of Iraq should produce evidence of their deaths together with the precise whereabouts of their gravesites;

(b) The Government of Iraq should review, seriously and immediately, all the outstanding case-files of the missing persons, in view of the fact that more than six years have elapsed since the submission of these files;

(c) The Government of Iraq should invite the ICRC to carry out its mandate through full and unrestricted access to all Iraqi prisons and other detention centres, in accordance with the ICRC's methods of work, i.e. access to all detention centres without prior notice, access to all premises of each detention centre, the possibility for repeat visits to the same place and the possibility to interview prisoners in private without any witnesses.

86. Today, almost eight years after the establishment of his mandate, the Special Rapporteur notes that almost none of the recommendations contained in his earlier reports have been adopted by the Government of Iraq. The Government has also failed duly to cooperate with the Special Rapporteur during the last seven years, by not replying to any of the communications he has sent to the Government, by refusing to allow him to visit the country since 1992, and by refusing to accept the stationing of United Nations human rights monitors in Iraq.

87. Without firm determination on the part of the international community to respond substantially and meaningfully to the extremely serious violations referred to in this report, the tradition of impunity which prevails in Iraq will almost certainly continue. Its unfortunate consequences will be, inter alia, to encourage the continuing human rights violations, to dash hopes for the re-establishment of the rule of law including accountable government, and to jeopardize efforts to establish peace and stability in the region.

88. Considering the gravity and the complexity of the situation and on the basis of the foregoing, the Special Rapporteur reiterates all the conclusions and recommendations formulated in his previous reports submitted to the General Assembly and the Commission on Human Rights. In particular, the Special Rapporteur reiterates the need to implement his early proposal that a human rights monitoring mechanism comprised of United Nations staff be implemented throughout Iraq, thus providing a continuous flow of first-hand, impartial and verifiable information on the human rights situation. This mechanism is fully described in his 1992 report to the General Assembly (A/47/367). The Special Rapporteur emphasizes that implementation of such a mechanism would remove any doubt concerning the serious allegations received in relation to matters under the strict control of the Government of Iraq (and generally inaccessible to anyone else), such as the situation in southern Iraq. In this connection, it is to be noted that the United Nations has consistently supported implementation of a human rights monitoring mechanism in Iraq, notwithstanding the persistent refusal on the part of the Government of Iraq to accept United Nations human rights monitoring. In the absence of such a monitoring mechanism, and in the full knowledge of established past and current serious violations, including the prevailing repressive politico-legal order in Iraq, the Special Rapporteur can only conclude, with regard to the allegations received and the integrity of the conclusions drawn therefrom, that the presumption of veracity must lie with the allegations rather than with the Government of Iraq. In any event, the Special Rapporteur observes no improvement in the situation of human rights in Iraq. In sum, the prevailing regime of systematic and systemic human rights violations is contrary to Iraq's many international obligations and, as determined by the Security Council in resolution 688, remains a threat to peace and security in the region.

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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Sudan

Report of the Special Rapporteur, Mr. Leonardo Franco, submitted in accordance with Commission on Human Rights resolution 1998/67

1. The mandate of the Special Rapporteur on the situation of human rights in the Sudan was established by the Commission on Human Rights in its resolution 1993/60 of 10 March 1993. On 30 March 1993, the Chairman of the Commission appointed Mr. Gáspár Bíró (Hungary) Special Rapporteur. Mr. Bíró submitted five reports to the Commission on Human Rights (E/CN.4/1994/48, E/CN.4/1995/58, E/CN.4/1996/62, E/CN.4/1997/58 and E/CN.4/1998/66) and five interim reports to the General Assembly (A/48/601, A/49/539, A/50/569, A/51/490 and A/52/510).

2. At its fifty-fourth session the Commission adopted resolution 1998/67 in which it decided to extend for a further period of one year the mandate of the Special Rapporteur.

3. In the same resolution, the Commission expressed its deep concern at continued serious human rights violations in the Sudan, including summary executions, extrajudicial killings, arbitrary arrests, detentions without due process, enforced or involuntary disappearances, violations of the rights of women and children, slavery and slavery-like practices, forced displacement of persons, systematic torture and denial of the freedoms of religion, expression, association and peaceful assembly. It emphasized that it was essential to put an end to such violations, and renewed its call to the Government of the Sudan to respect human rights fully and to comply with applicable international human rights instruments. It also called upon all

parties to the hostilities in the Sudan to respect fully the applicable provisions of international humanitarian law, to halt the use of weapons against the civilian population and to protect all civilians from violations of human rights and humanitarian law.

4. The Commission requested the Special Rapporteur to report to the Commission on the future need for human rights field officers, on the understanding that the Commission would, at its fifty-fifth session, reassess such need. It also requested the Special Rapporteur to report his findings and recommendations to the General Assembly at its fifty-third session and to the Commission at its fifty-fifth session.

5. Following the presentation of his report to the fifty-fourth session of the Commission on Human Rights, Mr. Bíró resigned. By letter dated 12 August 1998, the Chairman of the fifty-fourth session of the Commission appointed Mr. Leonardo Franco (Argentina) as the new Special Rapporteur on the situation of human rights in the Sudan.

6. By note to the General Assembly (A/53/504), the Secretary-General informed the Assembly that, owing to Mr. Bíró's resignation, the interim report due to be submitted to the Assembly at its fifty-third session could not be submitted. The Secretary-General also informed the Assembly of Mr. Franco's appointment.

7. Upon accepting his appointment, the Special Rapporteur proceeded to inform himself about the general situation in the Sudan and, in particular, on the situation of human rights and the humanitarian crisis in the country.

8. The Special Rapporteur, aware of the complexity of the historical, social and political background of the Sudan, has been particularly eager to learn from all sources any facts and figures which might help him in the discharge of his mandate.

9. From 9 October to 16 October 1998, the Special Rapporteur undertook a mission to Geneva for consultations with the High Commissioner for Human Rights, the staff of the Office of the High Commissioner for Human Rights, the specialized agencies, as well as with diplomatic missions and independent experts. From 17 to 22 October, the Special Rapporteur visited the United Kingdom where he consulted with a wide range of international non-governmental organizations, independent experts and academics.

10. While in Geneva, the Special Rapporteur called on the Permanent Representative of the Republic of the Sudan on 16 October 1998 and stated his wish to visit the country at the earliest opportunity. The Permanent Representative offered full cooperation and, while extending his welcome, impressed upon the Special Rapporteur that the combination of a regional conference on refugees and internally displaced persons being hosted by the Sudan and the celebration of Ramadan in January made it difficult to envisage a visit before the end of January 1999.

11. On the occasion of the seminar on "Enriching the Universality of Human Rights - Islamic Perspectives on the Universal Declaration of Human Rights", which the Special Rapporteur attended in Geneva on 9 and 10 November 1998, the

Special Rapporteur called again on the Permanent Representative of the Sudan who renewed his assurances that the Special Rapporteur would be welcome to visit the Sudan at his convenience and would be free to visit any places of his choice subject to security constraints. The Special Rapporteur suggested early February 1999 for such a visit and this proposal appears to be agreeable to the Sudanese authorities. The Minister of External Relations of the Sudan assured the High Commissioner for Human Rights on 16 November 1998 that the Special Rapporteur would be welcome to the Sudan and that he would enjoy the full cooperation of the Sudanese Government.

12. In view of his late appointment and the scheduling of his first mission to the Sudan, the Special Rapporteur will not be in a position to make a full report to the Commission on Human Rights at this stage. Upon satisfactory completion of his mission he plans to provide the Commission with a more substantive report.

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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1998/68

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Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 1998/68 of 21 April 1998 entitled "Extrajudicial, summary or arbitrary executions". It is the first report submitted to the Commission by Ms. Asma Jahangir and the sixteenth submitted to the Commission since the mandate on "summary and arbitrary executions" was established by Economic and Social Council resolution 1982/35 of 7 May 1982. It will be recalled that Mr. Bacre Waly Ndiaye resigned from his duties as Special Rapporteur on extrajudicial, summary or arbitrary executions on 30 May 1998. By a letter of 12 August 1998 the Chairman of the Commission on Human Rights informed Ms. Jahangir of his decision to appoint her as Special Rapporteur on extrajudicial, summary or arbitrary executions. On 26 August 1998 Ms. Jahangir formally accepted her appointment by a letter to the Chairman.

2. For reasons of continuity the present report covers communications sent and received by both the previous and present Special Rapporteur in the period from 1 November 1997 to 31 October 1998. As a close reading of this document will reveal, the number of communications processed in the last year is considerably lower than in previous years. This is mainly due to the transition of the mandate from one Special Rapporteur to another, and should not be taken as an indication of any significant changes as regards the occurrence and seriousness of extrajudicial, summary or arbitrary executions. In an addendum to the present report, the Special Rapporteur describes 62 country situations, which include in summary form the information transmitted and received by the Special Rapporteur, including communications received from Governments, as well as the Special Rapporteur's observations where considered appropriate.

3. The Special Rapporteur wishes to emphasize that the present report is only approximately indicative of the occurrence of violations of the right to life worldwide. This is mainly due to the fact that the report is exclusively based on information brought to the Special Rapporteur's attention. The Special Rapporteur wishes to point out that the present report was drafted under strict deadlines only two months after her appointment, which has limited her opportunity to fully explore the mandate entrusted to her. As most of the material and events covered by this report refer to the period prior to her appointment, the Special Rapporteur has in the drafting of this report chosen to follow the outline and methods developed and applied by her predecessor. The Special Rapporteur would further like to take the opportunity of her first report to the Commission to discuss ways in which she hopes her mandate might be developed and to point to specific issues that she intends to focus on in the future, as they may represent emerging trends which, unless properly addressed, may become widespread or gain legitimacy through continued practice.

I. THE MANDATE

A. Terms of reference

4. In resolution 1998/68, the Commission on Human Rights requested the Special Rapporteur to continue to examine situations of extrajudicial, summary or arbitrary executions, to respond effectively to information which comes

before her and to enhance further her dialogue with Governments, as well as to follow up on recommendations made in reports after visits to particular countries. The Commission also requested the Special Rapporteur to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

5. In its resolution, the Commission also requested the Special Rapporteur to apply a gender perspective in her work and to pay special attention to violations of the right to life of children, participants in demonstrations or other public manifestations, persons belonging to ethnic minorities, and individuals carrying out peaceful activities in defence of human rights and fundamental freedoms. The Commission further urged the Special Rapporteur to draw the attention of the United Nations High Commissioner for Human Rights to such situations of extrajudicial, summary or arbitrary executions that are of particularly serious concern to her or where early action might prevent further deterioration.

B. Violations of the right to life upon which the Special Rapporteur takes action

6. During the present reporting period, the Special Rapporteur acted in the following situations:

(a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial or in the case of a breach of the right to appeal, or the right to seek pardon, or commutation of the sentence, and in cases where mandatory death sentences are imposed. The Special Rapporteur also undertakes action when capital punishment is imposed for crimes which cannot be considered "most serious crimes" as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights. The Special Rapporteur may, moreover, intervene if the convicted person is a minor, mentally handicapped or ill, a pregnant woman, or a recent mother;

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals, or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;

(c) Deaths in custody owing to torture, neglect, or the use of force, or life-threatening conditions of detention;

(d) Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;

(e) Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State;

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law;

(g) Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;

(h) Genocide;

(i) Deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the State fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;

(j) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;

(k) Breach of the additional obligation to provide adequate compensation to victims of violations of the right to life, and failure on the part of Governments to recognize compensation as an obligation.

C. Legal framework and methods of work

7. For an overview of the international legal standards by which the Special Rapporteur is guided in her work, she makes reference to the report of her predecessor to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 42-68). For the purposes of the present report, the Special Rapporteur has, as noted above, largely followed the methods of work developed and applied by the previous Special Rapporteur, Mr. Bacre Waly Ndiaye. These methods of work are described in Mr. Ndiaye's report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, paras. 13-67), as well as his subsequent reports to the Commission (E/CN.4/1995/61, paras. 9-11 and E/CN.4/1996/4, paras. 11-12).

II. ACTIVITIES

A. General remarks

8. Since her appointment in August 1998, the Special Rapporteur has held a number of consultations with the Office of the High Commissioner for Human Rights, both in Geneva and in New York. On these occasions she has had the opportunity to meet with staff of the OHCHR, and also to discuss issues of mutual interest with other special rapporteurs of the Commission on Human Rights. The Special Rapporteur considers cooperation with other United Nations human rights mechanisms to be of key importance to the implementation of her mandate, and looks forward to continuing the productive cooperation that has already been established with other thematic mechanisms and country-specific special rapporteurs, particularly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women and the Special Rapporteur on the situation of human rights in Afghanistan.

She also intends to continue to develop her cooperation with the High Commissioner for Human Rights. The Special Rapporteur also looks forward to working together with United Nations field presences, particularly those set up by the Office of the High Commissioner for Human Rights.

9. The Special Rapporteur attaches great importance to her cooperation with non-governmental organizations engaged in human rights protection and monitoring, especially as regards issues falling within the scope of her mandate. In her new capacity as Special Rapporteur, she has already established contacts with a variety of such organizations, and looks forward to continuing this cooperation in the future. She will also try to support local non-governmental organizations by disseminating information about the functioning of United Nation human rights mechanisms. The media have also played a key role in keeping the world informed of and engaged in the efforts to fight human rights abuses, and the Special Rapporteur hopes for their continuing support in carrying out her mandate.

10. While the Special Rapporteur undertook no official visits in the period from the time of her appointment in August until the end of 1998, she has written to a number of Governments expressing her interest in visiting their countries. The Special Rapporteur believes that visits and field missions are indispensable for the implementation of her mandate, as they allow her to acquaint herself with specific country situations and to investigate not only the allegations brought to her attention, but put her in a better position to recommend remedial measures to help Governments in building their capacities for better governance. Information gathered on site will also greatly assist the Special Rapporteur in preparing accurate and objective reports on the situation in the countries concerned. The Special Rapporteur further hopes to visit countries where the authorities have managed to find constructive and sustainable solutions to problems falling within the scope of her mandate, and which in some instances could lend guidance to others still struggling with similar problems. She looks forward to continuing her dialogue with Governments in this regard.

B. Communications

11. The following paragraphs give an overview of communications sent to Governments in the course of the last year. The figures shown below represent only the tip of the iceberg, and should by no means be considered as indicative of the occurrence of extrajudicial, summary or arbitrary executions. Nor do these figures reflect the tragedy involved in each and every case, behind which there is the suffering and sorrow of family members which must eventually touch human society as a whole. The cries of agony, which need no language, continue to exist. We must respond to ensure them and ourselves that there is such a thing as an international conscience. No self-respecting Government can or does have peace itself where such misery and insecurity to human life surround its citizens.

12. During the period under review, the Special Rapporteur transmitted 63 urgent appeals to the Governments of the following 30 countries: Bahamas (2), Brazil (2), Colombia (9), Costa Rica (1), Democratic Republic of the Congo (3), Egypt (1), Guatemala (2), Indonesia (1), Iran (Islamic Republic of) (5), Iraq (2), Jamaica (1), Japan (1),

Kazakhstan (1), Mexico (1), Nigeria (2), Pakistan (1), Peru (3), Philippines (2), Rwanda (3), Sierra Leone (2), Singapore (1), Sri Lanka (1), Sudan (1), Tajikistan (1), Trinidad and Tobago (1), Turkey (1), Turkmenistan (2), United States of America (7), Venezuela (2) and Yugoslavia (1). She further sent one urgent appeal to the head of the Taliban Council. Among the urgent appeals sent by the Special Rapporteur, 10 were transmitted jointly with other experts of the Commission on Human Rights.

13. The urgent appeals sent concerned 158 individuals and the following groups of persons: prisoners in Abu Ghraib and Radwaniyah prisons in Baghdad, Iraq; inhabitants of Paratebueno in the municipality of Medina, department of Cundinamarca, Colombia; student demonstrators in Jakarta, Indonesia; displaced families in Rancho La Miel, department of Tolima, Colombia; civilians mainly belonging to the Hazara ethnic and religious minority in Mazar-I-Sharif, Afghanistan; inhabitants of Carmen de Atrato, department of Choco, Colombia; inhabitants of San José de Apartado, department of Antioquia, Colombia; human rights advocates in Colombia; members of La Oficina de Derechos Humanos del Arzobispado (the Archbishop's Office of Human Rights), Guatemala; members of the Defensoría Maya, Guatemala.

14. In addition, the Special Rapporteur transmitted allegations regarding the violation of the right to life of more than 2,300 individuals to the Governments of the following 40 countries: Algeria, Bahrain, Belgium, Bhutan, Brazil, Bulgaria, China, Colombia, Democratic Republic of the Congo, Ethiopia, France, Guatemala, Guyana, Honduras, India, Indonesia, Iraq, Israel, Japan, Liberia, Malaysia, Mexico, Morocco, Myanmar, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Republic of Korea, Rwanda, Senegal, Spain, Sri Lanka, Sudan, Thailand, the United Kingdom of Great Britain and Northern Ireland, Venezuela and Yugoslavia. In addition, allegations of violations of the right to life were sent to the Palestinian Authority.

15. During the period under review, from 1 November 1997 to 31 October 1998, the Governments of the following countries provided a reply to communications addressed to them during 1998 or during previous years: Algeria, Armenia, Azerbaijan, Bahamas, Bahrain, Bhutan, Brazil, Bulgaria, China, Colombia, Ecuador, Egypt, Ethiopia, Germany, Guatemala, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Mexico, Nepal, Panama, Paraguay, Peru, Philippines, Singapore, Spain, Sudan, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. The Special Rapporteur regrets that the Governments of Cambodia, Papua New Guinea and Yemen have not replied to any of the communications transmitted by the Special Rapporteur in the past four years, and that the Governments of the Democratic Republic of the Congo, Nepal and Pakistan did not provide replies to communications sent in the past three years. The Governments of Rwanda, Romania and Sri Lanka have not responded to communications for the last two years.

III. SITUATIONS INVOLVING VIOLATIONS OF THE RIGHT TO LIFE

A. Capital punishment

16. In its resolution 1998/68, the Commission on Human Rights requested the Special Rapporteur to continue monitoring the implementation of existing

international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

17. In this context, the Special Rapporteur transmitted 36 urgent appeals on behalf of 84 identified persons as well as on behalf of groups of unidentified persons to the Governments of the following countries: Bahamas (2), Democratic Republic of the Congo (2), Egypt (1), Iran (Islamic Republic of) (8), Iraq (2), Japan (1), Nigeria (2), Pakistan (1), Philippines (1), Rwanda (3), Sierra Leone (2), Singapore (1), Sudan (1), Tajikistan (1), Trinidad and Tobago (1), Turkmenistan (1) and the United States (6). The Special Rapporteur transmitted allegations to the Government of Iraq concerning irregularities in the implementation of capital punishment concerning 62 identified persons and the execution of hundreds of prisoners in connection with a so-called "prison cleansing campaign" in November and December 1997. For a more detailed discussion regarding the issue of capital punishment, reference is made to chapter V, section A, of this report.

B. Death threats

18. The Special Rapporteur transmitted 20 urgent appeals aimed at preventing loss of life after she received reports on situations where the lives and physical integrity of persons were feared to be in danger. In this context urgent appeals were sent to the Governments of the following countries: Brazil (2), Colombia (8), Costa Rica (1), Guatemala (2), Peru (3), Philippines (1), Sri Lanka (1), Turkey (1) and Venezuela (1). These urgent appeals concerned 37 identified persons and groups of persons such as inhabitants of certain municipalities, witnesses, indigenous groups, persons belonging to certain families and members of opposition parties or human rights groups.

19. Persons on whose behalf the Special Rapporteur acted had received, directly or indirectly, death threats from State officials, paramilitary groups and private individuals cooperating with or tolerated by the State. Persons were said to have received death threats from State officials in Brazil, Colombia, Peru and Venezuela. Death threats were allegedly received from paramilitary groups in Colombia. Lastly, the Special Rapporteur addressed urgent appeals to the Governments of Colombia, Costa Rica, Guatemala, Peru, the Philippines and Sri Lanka on behalf of persons who had allegedly received death threats from private individuals cooperating with or tolerated by the authorities. The Special Rapporteur remains particularly concerned about the situation in Colombia where death threats against human rights activists, community activists and trade union leaders have become routine in recent years. The Special Rapporteur also notes with concern that she transmitted three urgent appeals to the Government of Peru, including one on behalf of a person who had cooperated with United Nations human rights bodies.

C. Deaths in custody

20. The Special Rapporteur transmitted allegations of the death in custody of 44 persons, of whom 40 were identified, to the Governments of the following countries: Algeria (1), Bahrain (3), Belgium (1), Bhutan (1), China (1), France (1), Guyana (1), India (4), Iraq (4), Israel (2), Japan (1), Liberia (4), Malaysia (1), Mexico (6), Morocco (1), Myanmar (1), Nigeria (2), Peru (1), Philippines (1), Republic of Korea (1), Sri Lanka (1), the United Kingdom of Great Britain and Northern Ireland (1) and Yugoslavia (4). One allegation was also sent to the Palestinian Authority. In addition, the Special Rapporteur transmitted two urgent appeals on behalf of detained persons whose lives were alleged to be in danger. The Special Rapporteur transmitted one urgent appeal to Turkmenistan on behalf of two persons who were reportedly sentenced to long prison terms after an anti-Government demonstration. Fears for their lives had been expressed, as they were reportedly suffering constant beatings in prison. The Special Rapporteur also sent an urgent appeal to Venezuela on behalf of a person who was reportedly being ill-treated and threatened with death while in incommunicado detention.

21. The Special Rapporteur is concerned about the situation in India, as she continues to receive numerous reports of persons who died while they were in the custody of the police and other State officials. She is also aware of a growing number of cases in the Federal Republic of Yugoslavia, in which detainees have died after having reportedly sustained serious injuries under police interrogation. Reports also indicate that harsh living conditions and ill-treatment continue to claim the lives of inmates in Venezuelan prisons. The Special Rapporteur notes that in most countries where deaths in custody occur, State authorities are too often slow or reluctant to investigate cases and to bring persons responsible for such abuses to justice. As noted in section J below, this situation has, in some countries, led to a climate of impunity. She is also deeply concerned at the reluctance on the part of most Governments to recognize their additional obligation to ensure compensation to the families or relatives of victims of such abuses.

D. Deaths due to excessive use of force by law enforcement officials

22. The Special Rapporteur transmitted allegations regarding violations of the right to life of 37 persons, of whom 29 were identified, to the Governments of the following countries: Bulgaria (1), Ethiopia (4), France (1), Guyana (1), Indonesia (2), Malaysia (9), Mexico (2), Morocco (1), Nepal (1), Panama (1), Philippines (10), Spain (1), the United Kingdom of Great Britain and Northern Ireland (1) and Venezuela (2). These allegations included two reported violations of the right to life as a consequence of excessive use of force against participants in demonstrations in Indonesia. The Special Rapporteur also transmitted urgent appeals to the Governments of Indonesia and Brazil with the aim of preventing deaths due to excessive use of force by law enforcement officials. The Special Rapporteur appealed to the Government of Indonesia when she was informed that at least five students had been shot dead during a demonstration in Jakarta on 12 May 1998. In view of the fact that more demonstrations were expected, the Special Rapporteur expressed her concern over the security of the participants.

23. The Special Rapporteur is particularly concerned about reports from the Philippines saying that eight prisoners died as a result of excessive use of force by the Philippine National Police in connection with prison riots. It is alleged that several of the prisoners were shot dead after they had been wounded and were lying on the floor. The Special Rapporteur also notes with concern reports that eight Indonesian nationals were killed when Malaysian police reportedly attempted to forcibly repatriate a large group of Indonesians who were being held in immigration detention camps. She has also received reports indicating that in Brazil during the last two years, the average number of deaths resulting from police action has doubled. This trend has been attributed to the failure of the State authorities to prosecute police officers who shoot or wound criminal suspects.

E. Deaths due to attacks or killings by security forces, paramilitary groups or private forces cooperating with or tolerated by the State

24. The Special Rapporteur transmitted allegations of killings by security forces, by paramilitary groups or by private forces to the Governments of Brazil (3), Colombia (98), Democratic Republic of the Congo (185), Ethiopia (8), Guatemala (2), Honduras (3), India (8), Indonesia (6), Iraq (1), Israel (3), Mexico (18), Myanmar (160), Pakistan (44), Peru (3), Philippines (4), Senegal (2), Sri Lanka (10), Sudan (129), Thailand (3) and Yugoslavia (78). The Special Rapporteur also transmitted allegations to the Government of Rwanda concerning the death of 1,123 persons, including many women and children, in massacres allegedly carried out by the Rwandese Patriotic Army.

25. The Special Rapporteur transmitted an appeal urging the head of the Taliban Council to ensure the physical integrity of the civilian population of Bamyan and other parts of Afghanistan under Taliban control. The appeal was sent following alleged massacres of civilians by Taliban forces in Mazar-I-Sharif in August 1998. An urgent appeal was also sent to the Government of the Federal Republic of Yugoslavia following the killing of 25 Kosovo Albanians in clashes with government forces in the Drenica region in February 1998. Additionally, the Special Rapporteur appealed to the Government of Mexico following the killing of 45 indigenous Tzotziles by paramilitary groups in the area of Acteal in the State of Chiapas in December 1997. She further transmitted allegations of deaths due to attacks by paramilitary groups to the Governments of Colombia, Mexico and Ethiopia and by private individuals cooperating with or tolerated by the State to the Governments of Brazil, Colombia, Guatemala, Honduras, Mexico and Pakistan.

26. The situation in the Great Lakes region of Africa remains a cause for deep concern for the Special Rapporteur. She is outraged by the continuing reports of massacres allegedly carried out by the Rwandese Patriotic Army and the growing number of civilians, including many Rwandan refugees, allegedly killed by the security forces of the Democratic Republic of the Congo. She is also alarmed by the situation in Myanmar where government security forces have allegedly continued summary killings of unarmed villagers, most often in the context of forced relocation or forced labour for the security forces. The Special Rapporteur remains extremely concerned about the situation in Colombia, where attacks conducted by members of the army and paramilitary

groups against those believed to cooperate with the guerrillas have allegedly led to the deaths of many innocent civilians. The crisis in the Kosovo province in the Federal Republic of Yugoslavia has claimed the lives of a large number of unarmed civilians, including many women and children. It should be noted that the allegations presented above represent a mere fraction of the actual number of civilians killed in Kosovo, and only reflect cases brought directly to the Special Rapporteur's attention. The Special Rapporteur is also deeply concerned about continuing reports of extrajudicial killings by police and security forces in Pakistan.

F. Violations of the right to life during armed conflicts

27. The Special Rapporteur remains extremely concerned about the growing number of civilians and persons hors de combat killed in situations of internal strife or armed conflict in all regions of the world. In the last year many thousands of persons not participating in armed confrontations have lost their lives as a result of deliberate killings, the use of indiscriminate or disproportionate force, the utilization of anti-personnel mines, or the blockage of goods and services, including relief assistance, in countries such as Afghanistan, Colombia, the Democratic Republic of the Congo, Myanmar, Sri Lanka, the Sudan and the Federal Republic of Yugoslavia.

G. Expulsion, refoulement or return of persons to a country or place where their lives are in danger

28. The Special Rapporteur transmitted one urgent appeal to the Government of Kazakhstan on behalf of three Uighur nationals from China who were reportedly in imminent danger of being extradited to China, where they allegedly could face torture and execution, as they were accused of "ethnic separatist" activities by the Chinese authorities.

H. Genocide

29. The Special Rapporteur is aware of the frequent and at times casual use of the term "genocide" in everyday political discourse, which risks eroding some of its weight as a legal term. This underscores the importance of using the term "genocide" with precision and in accordance with the criteria set out in article II of the Convention on the Prevention and Punishment of the Crime of Genocide. However, she notes with concern the reluctance on the part of the international community to use the term "genocide", even when the situations referred to constitute grave and systematic violations of the right to life which seem to match these criteria. The Special Rapporteur welcomes the decision to include the crime of genocide in the jurisdiction of the International Criminal Court, the Statute of which was adopted in Rome on 17 July 1998.

30. In this context, the Special Rapporteur wishes to note the report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international law in the Democratic Republic of the Congo (S/1998/581, annex). In its report the Team presented the preliminary conclusion that "the systematic massacre of those [Rwandan Hutus] remaining in Zaire was an abhorrent crime against humanity, but the underlying rationale for the decisions is material to whether these killings constituted

genocide, that is to eliminate, in part, the Hutu ethnic group. The underlying reason for the massacres of Zairian Hutus in North Kivu is also material. This question is the most momentous one included in the mandate given to the Team, and one which requires further investigation." The Special Rapporteur regrets that, because of lack of cooperation on the part of the Government of the Democratic Republic of the Congo, the Team was unable to complete its investigations.

I. Deaths due to acts of omission

31. The Special Rapporteur transmitted an allegation to the Government of Sri Lanka concerning an incident reported to have occurred in the Katumara prison in December 1997, when 134 Tamil prisoners were allegedly attacked by armed Sinhalese prisoners. Three persons were reportedly killed and 17 others wounded in this attack which allegedly was carried out with the acquiescence or participation of prison guards and officials. The Special Rapporteur also submitted allegations to the Government of Algeria regarding the killing of 972 persons by armed groups in several locations close to Algiers. She is deeply disturbed by reports that in most of these incidents government forces, which were apparently stationed close to the scenes of the killings, failed to intervene despite calls for help. It is reported that in many cases the authorities have taken no action to investigate the killings or to arrest the perpetrators. One allegation was further submitted to the Government of the United Kingdom of Great Britain and Northern Ireland regarding a case in Northern Ireland in which it was alleged that a patrol of the Royal Ulster Constabulary, which was present at the scene, failed to intervene when a Catholic man was attacked by a group of loyalists. The man later died in hospital as a result of head injuries.

J. Impunity

32. The Special Rapporteur wishes to emphasize that Governments have an obligation to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish perpetrators, as well as to take effective measures to avoid the recurrence of such violations. However, the Special Rapporteur is deeply concerned that in most of the countries where violations of the right to life were committed, the authorities have failed in their duty to bring perpetrators to justice, which in some countries has led to a climate of impunity often leading to the perpetuation and encouragement of human rights violations, including extrajudicial, summary or arbitrary executions. For more detailed discussion concerning the problem of impunity, reference is made to chapter V, section B, of this report.

K. Rights of victims

33. The right of victims or their families to receive fair and adequate compensation within a reasonable period of time is a recognition of the State's responsibility for the acts committed by its personnel, as well as an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to conduct investigations into allegations of violations of the right to life with a view to identifying and prosecuting the alleged perpetrators. The Special Rapporteur wishes to emphasize that the right of the victim is important not as an instrument of revenge, but in order to ensure respect for the rule of law.

IV. ISSUES REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Violations of the right to life of women

34. During the period under review, the Special Rapporteur took action on behalf of 123 women, of whom 106 were identified. The Special Rapporteur transmitted urgent appeals on behalf of 15 women to the Governments of Brazil, Colombia, Costa Rica, Guatemala, the Islamic Republic of Iran, Peru, Sierra Leone, the Sudan, Trinidad and Tobago and the United States. She also sent an appeal to the Government of Colombia on behalf of a number of displaced families. In addition, the Special Rapporteur transmitted allegations regarding 108 cases of violations of the right to life of women, including 12 minors, said to have occurred in Belgium (1), Colombia (11), the Democratic Republic of the Congo (3), Indonesia (2), Liberia (1), Myanmar (38), the Philippines (1), Rwanda (43) and Sri Lanka (8). Allegations of a more general nature regarding violations of the right to life of groups of unidentified persons, including many women, were also sent to the Governments of Algeria and the Federal Republic of Yugoslavia.

35. It should be noted that the figures mentioned above do not necessarily show the actual number of women on whose behalf the Special Rapporteur intervened. First, they reflect only those cases in which it was specifically indicated that the victim was female. Second, some allegations transmitted by the Special Rapporteur refer to groups of unidentified persons which likely included women. It is a fact that women and children are the main victims of armed conflict and civil unrest. Most of the women on whose behalf the Special Rapporteur took action were women who received death threats or who were killed in attacks or killings by security forces of the State or by paramilitary groups. The Special Rapporteur is alarmed by reports from Sri Lanka and Myanmar saying that several women had allegedly been gang-raped before being killed. The Special Rapporteur is also concerned about the large number of women killed in the conflict in Kosovo. Many women are also among growing numbers of people killed by armed groups in Algeria.

B. Violations of the right to life of minors

36. During the period under review, the Special Rapporteur took action on behalf of 67 minors, of whom 56 were identified. She transmitted urgent appeals on behalf of minors to the Governments of Colombia, Mexico and the United States of America. An appeal was also sent to the head of the Taliban Council. The urgent appeal transmitted to the United States concerned a person who was reportedly facing the death penalty in Texas for an act of murder he reportedly committed when he was 17 years of age. The urgent appeals sent to the Governments of Colombia and Mexico and the head of the Taliban Council concerned unspecified or unknown numbers of minors whose lives were feared to be threatened, either because of their link to an adult or in connection with indiscriminate violence by paramilitary forces.

37. The Special Rapporteur transmitted 64 alleged cases of violations of the right to life of minors to the Governments of: Colombia (5), Democratic Republic of the Congo (1), Ethiopia (1), France (1), Honduras (1), Israel (2), Mexico (2), Myanmar (7), Nigeria (1), Pakistan (3), Philippines (3), Rwanda (25), Sri Lanka (6), Thailand (3), Venezuela (2) and Yugoslavia (1).

These included children who had died as a result of an excessive use of force, as well as in attacks or killings committed by security forces or paramilitary groups. Allegations of killings of groups of unidentified persons, including several children, by armed gangs were also sent to the Government of Algeria.

38. In the last year large numbers of children have been killed in the context of armed conflict or internal strife in countries such as Algeria, the Democratic Republic of the Congo, Sri Lanka and the Federal Republic of Yugoslavia. The Special Rapporteur is also distressed that many children were reportedly among the victims of massacres in the Democratic Republic of the Congo, Myanmar and Rwanda.

C. Violations of the right to life concerning refugees and internally displaced persons

39. During the present reporting period, the Special Rapporteur sent both urgent appeals and allegations concerning individuals and groups of people who had been displaced, either as refugees or as internally displaced persons, and who had suffered violations or threats of violations of the right to life. The countries to which these communications were sent and the individuals on whose behalf they were transmitted include: 70 peasant families in Colombia who reported having received death threats from paramilitary groups; 54 Rwandese refugees in the Democratic Republic of the Congo, who were reportedly killed while attempting to return to their homeland; and 45 Karen-minority villagers who had been forcibly relocated in Myanmar.

D. Violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms

40. During the period under review, the Special Rapporteur transmitted urgent appeals on behalf of 14 persons carrying out peaceful activities in defence of human rights and fundamental freedoms, requesting the Governments concerned to take the necessary measures to protect these individuals' right to life. The action undertaken by the Special Rapporteur was on behalf of human rights defenders threatened in the following countries. Brazil (1), Colombia (2), Costa Rica (1), Guatemala (6), Peru (2), Philippines (1) and Turkey (1).

41. In addition, the Special Rapporteur transmitted allegations of violations of the right to life of 13 human rights defenders. The following human rights defenders were reportedly killed in Brazil: Fransisco de Assis Araujo, Onalicio Araujo Barror, Valentin Serra; Colombia: Jesús María Valle Jaramillo, Luis Alberto Lopera Munera, Rosmira Gallego; Democratic Republic of the Congo: Oswald Hakorinama; Ethiopia: Ato Assefa Maru; Guatemala: Monseñor Juan Gerardi; Honduras: Jorge Castillo, Julian Alberto Morales; Mexico: José Tila López García, Oscar Rivera Leyva.

42. The Special Rapporteur continues to be concerned at the large scale on which threats against and violations of the right to life of human rights defenders are occurring in various countries in the world. The Special Rapporteur is particularly appalled at the situations in Colombia and Guatemala, where human rights defenders seem to be one of the target groups

for extrajudicial, summary or arbitrary executions and where measures aimed at their protection seem ineffective. The Special Rapporteur has received reports indicating that in the period from 1 January to 30 November 1998, more than 40 individual human rights activists and a large number of human rights groups, mainly in Latin America, were either threatened with death or extrajudicially killed.

E. Violations of the right to life of persons exercising their right to freedom of opinion and expression

43. During the period under review, the Special Rapporteur took action on behalf of a wide variety of persons falling within this category, including journalists, members of political parties and trade unions, as well as participants in demonstrations. Allegations of violations of the right to life of 160 persons exercising their right to freedom of opinion and expression were transmitted to the Governments of the following countries: Bhutan (1), China (1), Colombia (5), Indonesia (3), Iraq (4), Mexico (1), Myanmar (1), Nepal (1), Pakistan (11), Panama (1), Senegal (1), Sudan (129) and Yugoslavia (1). The allegations sent to the Government of the Sudan concerned the alleged killing of 129 young men who had apparently been forcibly recruited to undergo military training. It is reported that officers gave the order to shoot at the recruits when they expressed, in a peaceful manner, resentment that their request for leave to celebrate a religious holiday had been turned down. It is alleged that 74 persons were shot dead and 55 others drowned when trying to escape in a boat that was shot at and then sank.

44. Moreover, the Special Rapporteur transmitted 8 urgent appeals on behalf of 12 persons exercising their right to freedom of opinion and expression to the Governments of: Indonesia (1), Iran (Islamic Republic of) (4), Pakistan (1), Sri Lanka (1) and Turkmenistan (1).

F. The right to life and the administration of justice

45. During the period under review the Special Rapporteur undertook action on behalf of 14 persons involved in or related to the administration of justice, including lawyers, plaintiffs and witnesses. She transmitted one allegation of a violation of the right to life to the Government of Guatemala, regarding the killing of a person who was to appear as a witness in a case against three police officers accused of murder. The Special Rapporteur also sent urgent appeals to the Governments of Colombia, Costa Rica, Guatemala, Peru, the Philippines and Venezuela with the aim of preventing the loss of life of persons related to the administration of justice.

G. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities

46. The Special Rapporteur acted on behalf of a variety of persons considered to belong to national, ethnic, religious and/or linguistic minorities in their countries. Both urgent appeals and individual allegations concerning violations of the right to life were transmitted to Governments during the period under review. This included communications sent to the following countries on behalf of the following persons: the Federal Republic

of Yugoslavia on behalf of 80 ethnic Albanians in the province of Kosovo; Sri Lanka concerning over 20 persons belonging to the Tamil minority; Iraq on behalf of four Shi'a Muslims; Nepal concerning the alleged death of a Tibetan monk; and China where one Tibetan monk was said to have died as a result of torture. In addition, communications were sent to Brazil on behalf of an indigenous activist from the Xucuru population; to Colombia regarding death threats received by four indigenous activists and for the alleged killings of two other indigenous activists; to the Democratic Republic of the Congo, concerning the reported deaths of 54 Rwandan refugees; to Guatemala, where four individuals working for the Mayan Defence of Guatemala reportedly received death threats; to Honduras, on behalf of two members of the Garifunas indigenous group; to Myanmar, regarding the reports of 168 deaths of people of Karen ethnicity; and to Indonesia concerning the death of an East Timorese woman and the situation facing the ethnic Chinese minority, which remains a matter of concern.

H. Violations of the right to life and non-State actors

47. The Special Rapporteur notes that violent acts committed by non-State actors do not fall within the purview of her mandate, which only allows her to take action when perpetrators are believed to have a link with the State. However, the Special Rapporteur is aware of and has received information concerning violence committed by armed opposition groups resorting to murder and indiscriminate or arbitrary killings of civilians as a tactic of armed struggle against Governments. She is aware that violent acts committed by such groups have led to the death of many civilians, in particular in Algeria, Colombia and Sri Lanka, as well as in the Kosovo province of the Federal Republic of Yugoslavia. The Special Rapporteur condemns these acts as clear violations of basic humanitarian and human rights principles.

48. While the Special Rapporteur recognizes the difficulties that the concerned Governments face in fighting armed insurgent groups, she notes with concern that in some countries Governments have adopted counter-insurgency strategies, often involving excessive and indiscriminate use of force, aimed at targeting those suspected of being members, collaborators or sympathizers of those groups, leading to further violations of the right to life. In this context, the Special Rapporteur wishes to refer to paragraph 1 of general comment 6 of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights, in which the Committee confirmed that there can be no derogation from the right to life, not "even in time of public emergency which threatens the life of the nation". Governments engaged in action against armed groups must ensure that its own forces act in accordance with relevant international standards when carrying out their duties. Governments are also encouraged to devise strategies aimed at good governance through an efficient investigative process and to strengthen judicial capacity for long-term relief from rampant violence.

I. Violations of the right to life of individuals who have cooperated with representatives of United Nations human rights bodies (reprisals)

49. During the period under review, the Special Rapporteur sent one urgent appeal to the Government of Peru on behalf of a person who had cooperated with

representatives of United Nations human rights bodies. Heriberto Benítez Rivas, a human rights lawyer from Lima, reportedly received several death threats in the spring of 1998 in connection with his work as a human rights defender. Mr. Benítez had also given information to the United Nations regarding death threats received by a former member of the Constitutional Court in Peru.

V. ISSUES OF SPECIAL CONCERN TO THE SPECIAL RAPPORTEUR

A. Capital punishment

50. The Special Rapporteur shares and reiterates the view of her predecessor that capital punishment must be considered as an exception to the fundamental right to life and should as such be interpreted restrictively. In view of the fact that the loss of life is irreparable, it is also imperative that all restrictions and standards contained in pertinent international instruments are fully respected in proceedings relating to capital offences. The Special Rapporteur takes action in cases of capital punishment in which there is reason to believe that international restrictions, which are analysed in the paragraphs below, are not respected. In such cases, the carrying out of a death sentence may constitute a form of summary or arbitrary execution. Therefore, the Special Rapporteur has based her assessment of cases brought to her attention on the need to ensure full respect of the right to a fair trial, including guarantees as regards the impartiality, independence and competence of the judiciary. In addition, the Special Rapporteur has been guided in her work by the basic principles of the desirability of the abolition of capital punishment and the need to observe special restrictions and limitations in cases when the death penalty is applied.

1. Desirability of the abolition of the death penalty

51. The Special Rapporteur notes that while capital punishment has not yet been prohibited under international law, various United Nations human rights organs and bodies have, on several occasions, strongly reaffirmed the desirability of the abolition of the death penalty. During its fifty-third session the Commission on Human Rights took a major step in this direction with the adoption of resolution 1997/12 on 3 April 1997 on the question of the death penalty, in which the Commission for the first time called upon all States that had not yet abolished the death penalty to progressively restrict the number of offences for which the death penalty could be imposed. It further called on States to consider suspending executions, with a view to abolishing the death penalty. In the corresponding resolution 1998/8 adopted at its fifty-fourth session, the Commission called on States "to establish a moratorium on executions, with a view to completely abolishing the death penalty". In this context, the Special Rapporteur welcomes the fact that on 28 November 1998 the Bulgarian Parliament decided to abolish capital punishment. The last death sentence in Bulgaria was implemented in 1989. It may be noted that more than 100 countries have so far abolished the death penalty either by law or in practice.

52. The Special Rapporteur notes with appreciation that the Statute of the International Criminal Court, adopted in Rome on 17 July 1998, does not include capital punishment among the penalties that may be imposed by the

Court. It will be recalled that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda established by the Security Council in 1993 and 1994, respectively, are not authorized to impose death sentences.

53. On a regional level, new members of the Council of Europe are required to sign within one year, and ratify within three years of joining the organization, Protocol No. 6 to the European Convention on Human Rights, aimed at abolishing the death penalty, and are also required to place an immediate moratorium on executions. However, the Special Rapporteur has received reports that in the Russian Federation hundreds of persons have been sentenced to death and an unknown number executed since the country joined the Council of Europe in 1996. She has been informed that the death penalty is to be abolished in the Russian Federation by February 1999, in accordance with the country's obligations as a member of the Council of Europe. The Special Rapporteur is also concerned about reports that Ukraine continued executing prisoners in 1997, despite the required moratorium. The Special Rapporteur notes with appreciation the decision of the House of Commons of the United Kingdom of 20 May 1998 to incorporate Protocol No. 6 into British Law. The Special Rapporteur also welcomes the decision of the General Affairs Council of the European Union of 29 June 1998 to adopt a policy aimed at promoting the abolition of the death penalty. In the declaration defining this policy entitled "Guidelines to European Union Policy Towards Third Countries on the Death Penalty", the European Union sets out as its objective to work towards universal abolition of the death penalty as a strongly held policy view agreed to by all its member States.

54. The Special Rapporteur notes with regret that despite the current trend supporting the abolition of the death penalty, some countries have resumed executions in the last year. She notes that in June 1998 Ethiopia carried out its first execution since 1991, and that two brothers were executed in Gaza in August 1998 after having been found guilty of murder. These were the first executions to be carried out by the Palestinian Authority. The Special Rapporteur has also been informed of two executions carried out in the Bahamas in 1998, which marked the end of a two-year period during which no executions took place in that country. It has further been brought to her attention that since the reintroduction of the death penalty in the Philippines in 1993, more than 820 persons have been sentenced to death.

2. Fair trial

55. Legal proceedings in relation to capital offences must conform to the highest standards of impartiality, competence, objectivity and independence of the judiciary, in accordance with the pertinent international legal instruments. It is, therefore, imperative that defendants facing the imposition of capital punishment are able to benefit fully from the right to a competent defence counsel at every stage of the proceedings. Defendants must also be presumed innocent until their guilt has been proved beyond a reasonable doubt. The Special Rapporteur shares the opinion expressed by her predecessor that the execution of a death sentence passed after a trial in which basic fair trial standards, as provided for in article 14 of the International Covenant on Civil and Political Rights, were not respected constitutes a violation of the right to life. During the present reporting

period the Bahamas, the Democratic Republic of the Congo, Egypt, the Islamic Republic of Iran, Iraq, Japan, Nigeria, Rwanda, Sierra Leone, Tajikistan, Trinidad and Tobago, Turkmenistan and the United States of America were among countries reported to have imposed death sentences after proceedings in which the defendants did not benefit fully from the rights and guarantees for a fair trial contained in the pertinent international instruments. The Special Rapporteur has also received reports from Afghanistan indicating that in many trials leading to the imposition of the death penalty, sitting judges lack sufficient training and that cases are often decided in a matter of minutes.

56. In cases where the defendants may face the death penalty, the proceedings must also respect and ensure the right of review of both the factual and legal aspects of the case by a higher instance, which should be composed of judges other than those who dealt with the case at first instance. Furthermore, there can be no exception to the defendant's right to seek pardon, clemency or commutation of the sentence. In this context, the Special Rapporteur regrets that on 23 October 1997 the Government of Jamaica notified the Secretary-General that it was withdrawing as a State party to the first Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals who claim that their rights under the Covenant have been violated to petition the Human Rights Committee. The Government's decision is of particular concern to the Special Rapporteur as it will withhold an important appeal option from persons facing a death sentence. It should be noted that when examining communications filed by persons sentenced to death in Jamaica, the Human Rights Committee found that in a considerable number of cases article 14, the right to a fair trial, had been violated. On 31 October 1997 the Special Rapporteur, Mr. Bacre Waly Ndiaye, raised these concerns in a letter to the Government of Jamaica.

57. The Special Rapporteur has received reports from Egypt indicating that since October 1992, military courts that do not allow for the right to appeal have passed 58 death sentences which were subsequently carried out. The Special Rapporteur also remains concerned about the situation in Rwanda, where it is alleged that courts conducting trials for the crime of genocide, which often led to the imposition of death sentences, continue to deny defendants their right to basic fair trial guarantees, particularly the right to legal representation and appeal. The extensive use of the death penalty in China continues to be a cause for great concern, as there are allegations of serious shortcomings in many of the trials leading to the passing of death sentences. It is reported that more than 3,100 persons were sentenced to death by Chinese courts in 1997. Some 1,800 people were reportedly executed in the same time period.

58. The Special Rapporteur is also aware of cases in which defendants who have been sentenced to death have decided to accept the imposition of the death penalty and not to appeal to a higher jurisdiction or to request clemency or pardon. In this regard, the Special Rapporteur shares the view expressed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 entitled "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", recommending that Member States introduce mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence. During the period under

review, the Special Rapporteur transmitted urgent appeals on behalf of two persons who had chosen to withdraw their appeals in the United States of America.

59. Another cause for concern is the practice of establishing special tribunals and jurisdictions as a response to situations of internal conflict or other exceptional circumstances. Such tribunals are often set up with the intention of speedy trials, which often result in hastily imposed death sentences. There are reports of serious violations of fair trial standards in connection with proceedings before special tribunals, particularly as concerns the independence and impartiality of the judiciary, since the judges are often closely connected and at times directly accountable to the law enforcement authorities or the military.

60. The Special Rapporteur is also concerned over reports that most of the more than 60 foreigners currently under death sentence in the United States of America have been sentenced without being informed of their right under article 36 of the Vienna Convention on Consular Relations to receive legal assistance from their respective consulates. In this regard, the Special Rapporteur notes the case of Mr. Ángel Francisco Breard, a national of Paraguay, who was executed in Virginia despite a ruling by the International Court of Justice that the execution should be postponed pending full adjudication by the Court. It appears that Breard had not been informed of his rights under the Vienna Convention prior to his conviction. She further notes reports that 60 foreign nationals were among the more than 120 persons allegedly executed in Saudi Arabia in 1997, following trials that reportedly fell short of international standards.

3. Restrictions on the use of the death penalty

61. The Special Rapporteur is deeply disturbed that some countries still permit capital punishment for juvenile offenders, despite the fact that this practice is prohibited under international law. It may be noted that more than 100 of all 122 countries in which capital punishment is still legally in force have passed laws excluding death sentences for juveniles. During the present reporting period the Special Rapporteur transmitted urgent appeals to the Government of the United States of America on behalf of two persons sentenced to death for crimes they reportedly committed when they were 17 years old. The Special Rapporteur notes that since 1990, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen have executed persons who were reportedly under the age of 18 at the time when they committed the crime for which they received their death sentences. In the period 1985-1997, 19 juveniles were reportedly executed worldwide.

62. The Special Rapporteur wishes to point out that in resolution 1989/64 the Economic and Social Council recommended that States strengthen the protection of the rights of those facing the death penalty by eliminating the death penalty for persons suffering from mental handicap or extremely limited mental capacity. It should further be noted that the Safeguards guaranteeing protection of the rights of those facing the death penalty stipulate that the death penalty shall not be carried out on persons who have become insane. The Special Rapporteur strongly supports these recommendations and urges States to take action to reflect these restrictions in domestic law. In the period

under review, the Special Rapporteur took action on behalf of three persons who were sentenced to death in the United States of America, despite reportedly being mentally ill or handicapped. In this regard, the Special Rapporteur takes particular note of the case of Joseph John Cannon, a diagnosed schizophrenic, who was executed in Texas in April 1998 for a murder committed in 1977 when he was 17 years of age. The Special Rapporteur transmitted an urgent action on Mr. Cannon's behalf on 2 March 1998.

63. In regard to restrictions on the use of the death penalty, the Special Rapporteur finally wishes to recall article 6, paragraph 2, of the International Covenant on Civil and Political Rights which stipulates that, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". In its general comment 4 on article 6, the Human Rights Committee stated that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. The Special Rapporteur strongly supports this conclusion, and further believes that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved. Furthermore, paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur considers that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts usually described as "crimes against the State" or "disloyalty". Similarly, this principle would exclude actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.

64. The Special Rapporteur is particularly disturbed by reports that in August 1997 in the Islamic Republic of Iran, a 20-year-old woman was arrested and charged with engaging in sexual relations outside marriage. According to the information received, the woman was immediately sentenced to death by stoning. After she was stoned, medical doctors reportedly confirmed that she was dead. However, she apparently started breathing while being taken to the morgue, and was subsequently transferred to the hospital where her condition reportedly improved. In January 1997 the Special Rapporteur, Mr. Bacre Waly Ndiaye, sent an urgent appeal to the Government of Iran, following reports that the woman was about to be sentenced to a second stoning.

B. Impunity

69. The Special Rapporteur wishes to recall that the Human Rights Committee has in its general comment on article 6 of the International Covenant on Civil and Political Rights, as well as in numerous decisions, asserted that States are required to investigate all human rights violations, particularly those affecting the physical integrity of the victim, to bring to justice those responsible for such abuses, to pay adequate compensation to the victims or their families and to prevent the recurrence of such violations. The duty to investigate human rights abuses has been further reiterated and confirmed in a number of international instruments, including the Declaration on the Protection of All Persons from Enforced Disappearance and the Principles on the Effective Prevention of and Investigations of Extra-legal, Arbitrary and Summary Executions.

66. The Special Rapporteur notes that one of the key criteria of a functioning State is a justice system which is ready and capable of protecting the rights and integrity of the individual, inter alia by sanctioning the commission of crimes. Impunity for persons responsible for sanctionable acts, and in particular grave violations of human rights, undermines the rule of law, which is one of the most fundamental principles upon which society is based. Impunity also leads to the perpetuation of human rights violations, as offenders continue their practices and new abuses are ignored or covered up.

67. In some cases situations of impunity are a direct product of laws or other regulations which explicitly exempt public officials or certain categories of State agents from accountability or prosecution. This situation is particularly common in countries facing internal unrest or other exceptional circumstances, and where the authorities, particularly the police or security forces, are given wide-reaching powers to counter a real or perceived threat to national security. Broadly defined and vaguely worded amnesty laws, usually passed in the name of national reconciliation, may in some circumstances also lead to impunity for past abuses committed under the authority of a previous Government. In most cases, however, impunity is the product of a weak and inadequate legal system, which is unable or unwilling to take appropriate action to investigate and prosecute cases of human rights abuses, including violations of the right to life. In some countries the judiciary is strongly influenced by or directly accountable to the executive authorities, while in others, court decisions and orders are overruled or simply ignored by the law enforcement authorities. The Special Rapporteur is also increasingly concerned about the practice of prosecuting members of security forces in military courts, which often fall short of international standards regarding the impartiality, independence, and competence of the judiciary. Internal commissions of inquiry established to investigate abuses committed by law enforcement officials also often fail to meet these criteria.

68. During the period under review, the Special Rapporteur continued to receive information relating to impunity. She is particularly disturbed by the growing number of reports of killings by government security forces in Myanmar. The Special Rapporteur is not aware of any attempt by the Government of Myanmar to bring an end to these abuses, nor is there any indication that the Government intends to investigate the crimes committed in order to bring the perpetrators to justice. The Special Rapporteur is also alarmed by the obvious impunity with which paramilitary forces in Colombia have continued to commit systematic human rights violations, including violations of the right to life. Another cause for great concern is the continuing violence in the Great Lakes region, particularly in the Democratic Republic of the Congo and Rwanda, where Government-controlled forces, acting in a climate of apparent impunity and lawlessness, have reportedly committed large-scale atrocities, including massacres of civilians.

69. The Special Rapporteur welcomes the fact that after several years of preparation, the Statute for a Permanent International Criminal Court was finally adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome on 17 July 1998. The Court, which is to be established once the Statute is ratified by 60 States, will have jurisdiction over serious crimes of international concern, including genocide, war crimes, terrorism and crimes

against humanity. Under the principle of complementarity, the Court is to exercise its jurisdiction only in cases when national justice systems are unable or unwilling to do so. The Special Rapporteur is hopeful that the International Criminal Court, once it is established, will assume a key role in curbing the current trend of impunity by bringing perpetrators of gross human rights violations to justice.

70. In this context, the Special Rapporteur notes the discussion in the United Kingdom in late 1998 to allow extradition proceedings against former Chilean President Augusto Pinochet. It must be recognized that no one is above the law insofar as human lives are concerned. Strict concepts of impunity are now under challenge. However, the Special Rapporteur wishes to point out that measures taken to combat impunity by bringing perpetrators to justice cannot be selective, in order to have a meaningful impact on the responsibility of the State and its rulers to respect human life. Impunity for rulers suspected of killings is an offence to society as a whole. However, the objective of bringing officials and rulers within the ambit of ordinary law in this regard is not simply to give satisfaction to the family of the victims or to seek revenge for past atrocities, but to promote peace and respect for the law. It will be a major contribution towards ensuring a more responsible leadership.

C. Child soldiers

71. The Special Rapporteur notes with deep concern that there are today an estimated 250,000 children under the age of 18 serving in government forces or armed groups in various parts of the world. Some of these children are reportedly no more than eight years old. Under current international human rights and humanitarian law standards the age-limit for recruitment for military service is set at 15 years. It may be recalled that article 1 of the Convention on the Rights of the Child stipulates that "[F]or the purposes of the present Convention, a child means a person below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier". The only exception to this principle under the Convention is in relation to recruitment to armed forces and participation in hostilities (art. 38). This provision would seem to run counter to a growing legal consensus that a child under the age of 18 is entitled to special protection of its rights. A logical conclusion following from this principle would be that children need and should be afforded more, and not less, protection in times when their lives and security are threatened by armed hostilities.

72. The Special Rapporteur further notes that the majority of countries have set 18 years as the age when persons obtain the right to participate in political life including the right to vote. It is questionable whether young persons under the age of 18, who are not entitled to vote, can be required to take part in conflicts which are often the consequence of political decisions over which they have no influence. The Special Rapporteur further notes that the Human Rights Committee, in paragraph 13 of its general comment 21 on article 10 of the International Covenant on Civil and Political Rights, has recommended that the age for majority, when it comes to matters of criminal responsibility, should be 18 years.

73. While many of the juveniles participating in armed conflict are often presented as "volunteers", reports indicate a large number of these persons have actually been forcibly recruited. Even when the decision to enlist appears to have been based on free will, it should be noted that young persons, who have not reached the age of majority, cannot be expected to fully appreciate the implications of their decisions and actions or the dangers they may face. Since children lack maturity they are also more likely to act in an irresponsible way, which in the context of armed hostilities may result in arbitrary actions, including violations of the right to life. In view of these considerations and the legal arguments presented above, the Special Rapporteur concludes that the use of children in armed conflict constitutes a serious and direct threat to the protection and enjoyment of the right to life.

D. Traditional practices and customs affecting the right to life

74. The Special Rapporteur's attention has been drawn to certain traditional practices which, when condoned or ignored by the authorities, may constitute violations of the right to life. She is deeply disturbed by reports of so-called "honour killings" reported to take place in some countries in the Middle East, Latin America and South Asia, where husbands, fathers or brothers have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family. She has also received accounts of such cases reported to have occurred in Turkey. This practice is usually resorted to when a woman is believed to have engaged in a sexual relationship with a man. In other cases women have reportedly been killed by their husbands after having demanded a divorce. The "honour killing" is usually a decision by an improvised tribunal consisting of male family members, and is as a general rule carried out by an under-age male relative of the woman. Such offenders are given special consideration of mitigation on the plea of cultural sensitivity. The Special Rapporteur has been informed that men who commit "honour killings" normally receive considerably shorter sentences, as the courts view defence of the honour of the family as a mitigating circumstance. It is also alleged that the police often fail to intervene to stop "honour killings" they are made aware of. The Special Rapporteur has received reports that in 1997 in Jordan more than 20 women were murdered by male relatives claiming to have acted in defence of their family's honour. She has also been informed that the Jordanian Penal Code includes several articles providing for reduced penalties for men who kill their wives or female relatives because of adulterous relationships. It further appears that in these cases Jordanian courts often pass reduced sentences ranging from two years to six months of imprisonment.

75. The Special Rapporteur urges States, and in particular members of the judiciary in the countries concerned, to use all their authority and integrity to bring this unacceptable practice to an end. With regard to the situation in Jordan, the Special Rapporteur is encouraged to note that in recent times members of the Royal Family have taken a personal interest in addressing the country's problem of violence against women, including the practice of "honour killings".

E. The right to life and sexual orientation

76. The Special Rapporteur is deeply concerned by numerous and continuing reports of persons having been killed or sentenced to death because of their sexual orientation. She is particularly disturbed by reports from Brazil, Colombia and Mexico, where so-called "death-squads" have over the last years reportedly murdered a large of number of persons belonging to sexual minorities. The Special Rapporteur has been informed that in the period from 1991 to 1994, 12 homosexual men were killed by armed groups in the city of Tuxtla Gutiérrez, Mexico. It appears that the perpetrators of these killings were never identified, and it is alleged that the authorities failed to carry out thorough and complete investigations into these crimes. The Special Rapporteur has also received reports that in the last several years hundreds of so-called "social undesirables", including many homosexuals and transvestites, have been killed by armed groups in Colombia. In Brazil it is reported that hundreds of persons belonging to sexual minorities have been murdered in the last 10 years. It is alleged that the Brazilian and Colombian authorities have not taken adequate action to find and prosecute the persons responsible for these crimes.

77. The Special Rapporteur regrets that in some States homosexual relationships are still punishable by death. In this regard she wishes to recall that under article 6 of the International Covenant on Civil and Political Rights, death sentences may only be imposed for the most serious crimes. As discussed above in chapter V, section A (3), this restriction clearly excludes matters of sexual orientation. The Special Rapporteur further believes that criminalizing matters of sexual orientation increases the social stigmatization of members of sexual minorities, which in turn makes them more vulnerable to violence and human rights abuses, including violations of the right to life. Because of this stigmatization, violent acts directed against persons belonging to sexual minorities are also more likely to be committed in a climate of impunity.

VI. CONCLUDING REMARKS AND RECOMMENDATIONS

78. The observations and discussion presented above bear testimony to the scope and seriousness of the problem of extrajudicial, summary or arbitrary executions, and confirm the need for the international community to renew its efforts to combat these atrocities. In light of the information brought to her attention during the period under review, the Special Rapporteur concludes that there is no indication of a decrease in violations of the right to life. She notes that while certain persons, such as human rights defenders, political activists, displaced persons and members of various minorities, continue to be particularly exposed to violations of the right to life, these abuses are by no means exclusively limited to these groups. In the last year there have been increasing reports of killings perpetrated by Government-controlled security forces and paramilitary units. Many of the victims of these horrendous acts have been women, children and elderly persons. The growing number of innocent civilians killed in the context of armed conflict and internal strife is also a cause for deep concern.

79. The Special Rapporteur wishes to stress that ending violations of the right to life is ultimately a question of Governments' genuine will and

readiness to honour their obligation to protect and promote the rights of the people living under their jurisdictions. Without basic respect for the rule of law, all declarations and commitments made by Governments lose their meaning, and the texts of the international instruments become empty words.

80. The Special Rapporteur is honoured to be entrusted with this challenging mandate, and she wishes to take this opportunity to thank her predecessor, Mr. Bacre Waly Ndiaye, for his hard and invaluable work in developing the mandate into a strong and credible mechanism for the protection of perhaps the most fundamental of all rights, the right to life. She recognizes the daunting tasks ahead, which she will endeavour to carry out with objectivity, diligence and commitment. At the same time, however, the Special Rapporteur fears that the limited resources placed at her disposal will hamper her efforts to discharge her mandate in an effective way. She is particularly concerned that shortage of staff and the absence of a proper database system may severely limit her possibilities for proper follow-up of cases brought to her attention. The Special Rapporteur also wishes to stress that she will only be successful in carrying out her mandate if Governments show willingness to cooperate and support her work in a spirit of openness and good faith. She further believes that her mandate can only be useful as a human rights mechanism if it manages to let the voices of the victims and their families be heard, and convince Governments of their responsibility to take joint action in order to bring these abuses to an end.

Recommendations

1. Capital punishment

81. The Special Rapporteur strongly recommends that States that have not ratified the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol, should do so. All States should bring domestic legislation regarding the use of capital punishment in line with international standards. States that enforce their capital punishment legislation should observe all fair trial standards contained in the relevant international legal instruments, in particular the International Covenant on Civil and Political Rights.

82. Governments of countries in which the death penalty is still enforced are urged to deploy every effort to restrict its use, and to take measures aiming at the complete abolishment of capital punishment both in law and practice. As one of these measures, Governments should establish a moratorium on the execution of death sentences, in accordance with Commission on Human Rights resolution 1998/8. Pending the imposition of such a moratorium, Governments that continue to enforce death penalties are urged to take immediate steps to bring their domestic legislation and legal practice into line with international standards prohibiting the imposition of death sentences in regard to minors and mentally ill or handicapped persons. Governments are further called upon to review their existing legislation and legal practice with the aim of limiting the use of the death penalty to exclude crimes that cannot be considered "most serious", as provided in article 6 of the International Covenant on Civil and Political Rights. Death sentences should under no circumstances be mandatory.

83. Governments of countries which still retain laws providing for the death penalty, but which exercise a de facto moratorium on the passing of death sentences or the implementation of such sentences, are called upon to take the necessary steps to remove capital punishment from their legislation, particularly where it applies to children.

2. Death threats

84. Governments are under an obligation to ensure the protection of the human rights of all persons under their jurisdiction. This includes the duty to investigate all instances of death threats or attempts against lives that are brought to their attention, regardless of the race, ethnicity, religious belief, political persuasion or other distinction of the potential victim. Governments must also take effective preventive measures to ensure full protection of those who are particularly exposed and vulnerable to extrajudicial, summary or arbitrary execution. Governments should also consistently and in the strongest possible terms publicly denounce death threats, and adopt and publicly support policies aimed at promoting a climate of tolerance.

3. Deaths in custody

85. The Special Rapporteur is deeply concerned over continuing reports of deaths in custody. She wishes to emphasize the need for all States to review legislation and practices regarding arrest and conditions of detention in order to bring them into line with the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. Governments should also take immediate steps to ensure that international norms and principles prohibiting any form of cruel, inhuman or degrading treatment are strictly applied in all places of detention.

86. The Special Rapporteur notes that most cases of custodial death occur in the period between a person's arrests and his or her arraignment. She therefore calls on Governments to deploy efforts to minimize the time of pre-trial detention prescribed by law, and to ensure that standards pertaining to the treatment of persons in pre-trial custody are observed. Prison guards and law enforcement personnel should receive training on the observence of the aforementioned norms in performing their duties. All deaths in custody should be promptly investigated by a body that is independent from the police or prison authorities. State authorities should guarantee the right of persons in detention to receive visits by their lawyers and family, and to have access to adequate medical care. When applicable, Governments should also continue and strengthen their cooperation with the International Committee of the Red Cross and allow free and unimpeded access of its delegates to places of detention. In addition, she requests the Commission on Human Rights to call for the rapid adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with a view to establishing a system of periodic visits to places of detention.

4. Excessive use of force by law enforcement officials

87. The Special Rapporteur calls on all Governments to ensure that their police and security personnel receive thorough human rights training, in

particular with regard to restrictions on the use of force and firearms in the discharge of their duties. Such training should also include the teaching of methods of crowd control without resorting to lethal force. States are under an obligation to ensure that all cases of excessive use of force by State agents are thoroughly investigated, and that the persons responsible for such abuses are brought to justice.

5. Violations of the right to life during armed conflict

88. States that have not yet ratified the four Geneva Conventions of 1949 and their two Additional Protocols are strongly encouraged to do so. Governments should ensure that members of their military and security forces receive adequate training in the human rights and humanitarian law standards applicable to situations of armed conflict and internal strife. Officers and other persons in positions of command should maintain strict discipline in their respective units, and take prompt action to prevent human rights abuses by their subordinates. Violations of humanitarian and human rights law standards by members of the armed forces should be promptly and consistently sanctioned.

89. Governments of countries engaged in action against armed opposition groups should take the necessary steps to ensure that counter-insurgency operations are conducted in strict compliance with international human rights standards, and that government forces do not resort to excessive or indiscriminate use of force. Non-State actors engaged in armed conflict should undertake to respect basic humanitarian principles, particularly those defined in common article 3 of the Geneva Conventions. Members of such forces should be held legally accountable for their acts. Governments that control armed groups operating outside their own territory should take full responsibility for human rights violations, including extrajudicial, summary or arbitrary executions, committed by these forces.

6. Imminent expulsion of persons to countries where their lives are in danger

90. The Special Rapporteur calls upon Governments that have not yet ratified the Convention and the Protocol relating to the Status of Refugees to do so. All Governments should at all times refrain from expelling a person in circumstances where respect for his or her right to life is not fully guaranteed. Refoulement of refugees or of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, should at all times be prohibited. Whenever a country is faced with a massive influx of refugees the international community should provide necessary assistance to enable the host country to receive these persons in safety and dignity.

7. Genocide

91. Governments are encouraged to ratify the Convention on the Prevention and Punishment of the Crime of Genocide. The Special Rapporteur calls on States to pay due attention to the stipulations in the Convention concerning the prevention of genocide. Concerned States, assisted by the international

community, should take all necessary measures to prevent acts of communal violence or inter-ethnic conflict from degenerating into large-scale killings that may reach the dimension of genocide. States in which acts of communal violence occur should do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all segments of the population, regardless of ethnic origin, religion, language or any other distinction. If required, the international community should assist these countries in preventing and defusing such conflicts. Governments should at all times refrain from spreading or condoning any propaganda or incitement to hatred and intolerance that might foment acts of communal violence. Persons responsible for such acts should be brought to justice.

92. The Special Rapporteur encourages the States parties to the Convention on the Prevention and Punishment of the Crime of Genocide to consider ways of establishing a monitoring mechanism to supervise the implementation of the Convention. She urges the international community and all concerned States to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, particularly by arresting and handing over suspects, so as to bring to justice as soon as possible those accused of the crime of genocide. She also welcomes the adoption of the Statute of the International Criminal Court, and notes with appreciation that the Court will have jurisdiction over the crime of genocide. She is hopeful that the Court will be active in combating impunity for persons responsible for acts of genocide, and thereby contribute to the eradication of this horrendous crime.

8. Acts of omission

93. The Special Rapporteur urges Governments to adopt the necessary preventive and protective measures to ensure full enjoyment and protection of the right to life of all persons under their jurisdiction. Such measures may include requests for international assistance, should the Governments concerned feel unable to fulfil this obligation themselves. Governments are obliged to fight impunity for all crimes and to bring to justice persons committing murder in the context of mob violence or in the name of so-called popular justice. Governments should at no time allow acts of incitement to revenge that might lead to violations of the right to life. Governments should under no circumstances harbour and support groups or persons engaged in acts of terrorism. State officials who fail to take appropriate action to prevent violations of the right to life should be prosecuted.

9. Impunity

94. States are obliged to conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all its manifestations, and to identify and prosecute those responsible. In addition to combating impunity by addressing past or ongoing abuses, States should take positive measures aimed at preventing the recurrence of such violations.

95. In this regard, the Special Rapporteur believes that the following measures should be introduced: (a) Governments that have not done so should establish strict procedures, such as habeas corpus, aimed at ensuring the integrity of persons under any form of detention; (b) State authorities should

ensure that strict discipline and a clear chain of command is maintained within the police and armed forces. All paramilitary or security forces not directly and strictly under government control should be immediately disbanded; (c) Governments should consider the establishment of independent human rights redress mechanisms, such as the Ombudsman institution, with the authority to take action on behalf of victims of human rights abuses. Such mechanisms would also serve to increase the transparency of State institutions and the accountability of public officials; (d) Governments should take effective action to strengthen the integrity, status and resources of the judiciary; (e) in accordance with principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of victims should not be endorsed; (f) no person, regardless of his or her present or past status, function and position, should be immune from prosecution for gross human rights violations, including extrajudicial, summary or arbitrary executions. The Special Rapporteur further believes that a free and independent press can contribute to curbing impunity by giving publicity to human rights abuses and scrutinizing the work of the State authorities.

96. The Special Rapporteur welcomes the adoption of the Statute of the International Criminal Court and believes that the Court will provide an important complement to national legal systems that are unable or unwilling to combat impunity by exercising their own jurisdiction. In this context, the Special Rapporteur strongly recommends that States expedite the establishment of the International Criminal Court by securing the necessary ratifications of the Statute adopted by the United Nations Diplomatic Conference in July 1998.

10. Child soldiers

97. The Special Rapporteur deeply regrets the continuing practice of engaging children under the age of 18 in armed conflict. She strongly supports the adoption of an optional protocol to the Convention on the Rights of the Child aimed at prohibiting the recruitment of children under 18 years of age into the armed forces and armed groups and their participation in armed conflict. She further urg s States to take immediate unilateral action to raise the age of enlistment to 18 years.